

THE MAINE TOWNSMAN

CONTAINING THE STATUTORY LAWS OF MAINE
RESPECTING THE DUTIES OF

TOWN OFFICERS,

POWERS AND OBLIGATIONS OF TOWNS, CITIES AND PLANTATIONS,
AND LAWS AFFECTING GENERAL BUSINESS.

REVISED TO JANUARY 1, 1911,

BY

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OF CUMBERLAND BAR.

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PREFACE TO THE REVISED EDITION.

This revision is presented to the public with the belief that it will be found a useful work for town officers, business men generally, and members of the legal profession. It is designed particularly to give full information to all town officers of the statutory provisions relating to their various offices, and to enable them to find readily what their powers and duties are.

It is believed that the work will prove not only of great benefit and convenience to town officers of experience, but will also be indispensable to those persons who are entering into the active conduct of town affairs.

The grouping of the statutes relating to the subjects treated saves the perplexing labor of studying the Revised Statutes of 1903, and the Public Laws enacted by the several legislatures since that date, and gives the statutory law as it stands to-day, in a simple and accessible form.

Another feature of the work, a compilation of important decisions of the Supreme Judicial Court of Maine, will prove of value in solving the difficulties which will present themselves to every town officer in the course of his official duty.

In addition to the duties of town officers, the book contains considerable information relating to the conduct of affairs and business matters which will be of service to the general public; and the statutes and decisions in this branch of the work will be specially instructive to those who desire to inform themselves

upon the law controlling matters that are daily brought to the attention and which are of interest to all.

The rules of the Probate Court and additional matters will be of use to persons having business of that nature.

The miscellaneous forms, together with the forms found in the book under appropriate headings, will, it is thought, be of value to the business public.

The chapters and sections of the Revised Statutes of 1903 are thus referred to, R. S. c. , § .

The reports of judicial decisions are referred to by volume and page.

The acts of the legislature published since the revision are referred to by the words "Laws of," or "P. L."

The constitution of the state is referred to as "Const."

The abbreviation "Ib." refers to the next preceding authority.

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MAINE TOWNSMAN.

CHAPTER I.

TOWNS—ORGANIZATION.

A town is an organized portion of the inhabitants of the state within defined limits of territory, within the same county.

At the first settlement of the Massachusetts Bay Colony, towns consisted of clusters of inhabitants, dwelling near each other, which, by the effect of legislative acts, designating them by name, and conferring upon them certain powers, became in effect municipal or quasi corporations, without any formal act of incorporation. Soon after the adoption of the Constitution of Massachusetts it was for the first time expressly enacted that towns should be corporations. And it was always recognized by the courts of Massachusetts, even before it was declared by statute, that towns, parishes, etc., by virtue of their existence as quasi corporations, were capable of holding property and making contracts, for the purposes for which they were established. 122 Mass. 349.

Towns are now created by statute. The usual act of incorporation simply provides that certain defined territory, with the inhabitants resident therein, be incorporated into a town by the name designated. In the absence of conditional provisions therein, an act of incorporation becomes imperative and binding whenever it takes effect, without any formal acceptance on the part of its inhabitants. It has none of the elements of a contract, or compact, conferring a vested right upon its inhabitants as against the state, that the territorial limits of the town shall continue as when incorporated for any particular period; but it is simply an act of legislation, enacted for the public good, to be amended or repealed only by the sovereign power which created it, whenever and however, under the constitution, it deems the end may require. The citizens of the town, as such, have no power to change even its name. Thus created it becomes an institution

of the state, established for certain public purposes, and for effecting those purposes, it is invested with certain corporate powers, and is charged with corresponding duties—all either expressly or impliedly provided for in the statutes and adapted to their peculiar nature. Within the proper scope of these purposes, powers and duties, its corporate acts bind the corporation; while all others being foreign thereto, are without law and have no binding effect. 63 Me. 235.

None of the powers and duties of towns in this state are derived from or imposed by the common law. 14 Me. 377.

As the corporate powers are derived from legislative enactment these powers cannot be transcended by the town. Any act attempting so to do is illegal. Towns cannot ratify negligent or tortious acts of their officers. 52 Me. 118.

The boundaries of towns may be changed by a legislative enactment, but cannot be changed by corporate acts of towns or the inhabitants thereof unless such acts are authorized or ratified by the legislature. 38 Me. 37; 53 Me. 327.

When the act incorporating a town is repealed, the territory which was embraced therein becomes an unincorporated township. 87 Me. 503.

In *Lovering v. Foxcroft* the supreme court of Maine defines the powers and duties of towns as follows:

Towns in Maine, as in other New England States, are territorial divisions into which the territory of the state is divided by the legislature for political purposes,—for the more convenient and effectual administration of certain functions of political government. The inhabitants of the particular territory are made a political agency and particular duties and liabilities for purposes of administration are imposed upon them even without their consent. They are not a voluntary association. They cannot escape the duties and burdens imposed, except by a removal of themselves and their property from the town territory. It is clear that such agencies are subject to such duties and liabilities only as are expressly, or by necessary implication, imposed upon them by the legislature to effectuate the purpose of their creation. The powers of a town over the inhabitants and property within its territory are correspondingly limited to such as are necessary for the efficient discharge of those duties and liabilities;—and even these limited powers are to be exercised upon the citizen and his property only with such precautions and in such manner as may be prescribed by the state. Any effort to exercise any

of these powers in any other way would be nugatory. The citizen, the tax-payer, can ignore any action or attempted action not strictly in accordance with the course prescribed. In the case of New England towns, especially, the interests and immunities of the citizen are and must be scrupulously guarded, since his private property can be taken upon a judgment against his town. Such a severe liability requires that the powers and proceedings of towns should be construed with great strictness in his favor. 91 Me. 367.

The inhabitants of each town are a body corporate, capable of suing and of being sued, and of appointing attorneys and agents. R. S. c. 4, § 1.

After the legislature has incorporated a certain district into a town, the inhabitants thereof may call a town meeting.

The petition for the first town meeting should be signed by ten or more legal voters and addressed to a justice of the peace in the county requesting him to issue his warrant for such meeting. The petition should state the matters to be acted upon. The warrant shall specify the time and place at which the meeting shall be held, and in distinct articles shall state the business to be acted upon at such meeting; and no other business shall be there acted upon. The warrant may be directed to any constable of the town, or any person by name, directing him to warn and notify all persons qualified to vote at such meeting, to assemble at the time and place appointed. Such meeting shall be notified by the person to whom the warrant is directed by posting an attested copy thereof in some public and conspicuous place in said town seven days before the meeting, unless the act creating the town provides a different mode. The person who notifies the meeting shall make return on the warrant, stating the manner of notice, and the time when it was given. R. S. c. 4, § 3, 4, 5, 6 and 7.

When part of a town is set off and incorporated as a new town, the old town, though shorn of part of its territory, still retains all the property, powers and rights, and remains subject to all the obligations of the original town unless otherwise provided in the act. 92 Me. 328.

CHAPTER II.

TOWN LINES.

Lines between towns shall be run once every five years, except as mentioned in the two following sections. The municipal officers of the oldest town shall give ten days' notice in writing to such officers of the adjoining towns of the time and place of meeting for perambulation; and each officer who neglects to notify or attend in person, or by substitute, forfeits ten dollars, two-thirds to the town which complies with its duty, and one-third to any two or more of said officers of the town complying, to be recovered within two years after the forfeiture is incurred; and the proceedings of such officers, after every such renewal of boundaries, shall be recorded in their town books. R. S. c. 4, § 108.

The assessors of organized plantations are subject to the performance of the duties devolving on municipal officers of towns in relation to perambulation. 56 Me. 30.

Towns, which, since March twenty-two, eighteen hundred and twenty-eight, have perambulated, or shall perambulate their lines as by law prescribed, and set up stone monuments, at least two feet high, at all the angles, and where the lines cross highways, or on or near the banks of all rivers, bays, lakes or ponds, which said lines cross, or which bound said lines, are exempt from the duty of perambulating said lines, except once every ten years, commencing ten years from the time that the stone monuments were so erected. R. S. c. 4, § 109.

When a town petitions the supreme judicial court, stating that a controversy exists between it and an adjoining town respecting a town line, and praying that it may be run, the court, after due notice to all parties concerned, may appoint three commissioners, who shall, after giving notice of the time and place of meeting, to all persons interested, ascertain and determine the lines in dispute, and describe them by courses and distances, and make, set and mention in their return, suitable monuments

and marks for the permanent establishment thereof, and make duplicate returns of their proceedings; one of which shall be returned to the court, and the other to the office of the secretary of state; and such lines shall be deemed in every court and for every purpose the dividing lines between such towns. R. S. c. 4, § 110.

Assessors of plantations perform the duties of municipal officers of towns in relation to perambulations. R. S. c. 4, § 121; 56 Me. 30.

Form of Notice for Perambulation.

The selectmen of the town of —, to the selectmen of the town of —:

GENTLEMEN:—The subscribers, selectmen of —, being selectmen of the oldest of said towns, hereby give you notice to meet at —, on the — day of —, at — o'clock in the forenoon, for the purpose of perambulating and running the lines between said towns, and renewing the marks and bounds, according to the revised statutes of this state.

Dated at —, this — day of —, A. D. 19—.

A. B., }
C. D., } *Selectmen of —.*
E. F., }

Return of Perambulation.

Agreeably to notice given to the town of —, by —, of —, to meet at —, on the — day of —, A. D. 19—, for the purpose of perambulating and running lines between the said towns, and renewing the marks and bounds, we, the subscribers, selectmen of said towns, have met at the time and place, and for the purposes aforesaid, and do make the following return of our doings. [*Here insert the return of doings.*]

In witness whereof, we have hereunto mutually set our hands, this — day of —, A. D. 19—.

A. B., }
C. D., } *Selectmen of —.*
E. F., }

G. H., }
H. I., } *Selectmen of —.*
O. B., }

Form of a Petition to the Supreme Judicial Court for the Appointment of Commissioners.

To the honorable justice of the supreme judicial court, to be holden at —, in and for the county of —, on the — day of —, A. D. 19—.

Respectfully represent, [*insert name of selectmen,*] the subscribers, selectmen of the town of —, in said county, that, on the — day of — last past, pursuant to a notice previously given, they met the selectmen of the town of —, in said county, for the purpose of perambulating the lines between said towns, and renewing the marks and bounds thereon, but that a controversy exists between said parties, in renewing and establishing the lines and bounds of said towns; wherefore your petitioners pray your honors

that the same may be run by commissioners to be appointed by your honors, and that your honors will appoint commissioners to run said lines, and to ascertain and determine the line or lines in dispute, and describe the same by courses and distances, and mention in their return suitable monuments or marks for the permanent establishment of such lines.

A. B., }
C. D., } *Selectmen of* ———.
E. F., }

As the power of altering the lines of towns rests wholly with the legislature, the selectmen can only decide where the true town line is. 53 Me. 327.

The return of perambulation should be recorded in the records of each town; and the town clerk should certify at the bottom as follows:

A true record of the original.

Attest,

A. B., *Town Clerk.*

On petition of selectmen to the supreme judicial court, commissioners will be appointed to settle disputed town lines.

Form of Petition.

To the honorable justices of the supreme judicial court, to be holden at ———, in and for the county of ———, on the ——— day of ———, A. D. 19—.

Respectfully represent, [*insert name of selectmen,*] the subscribers, selectmen of the town of ———, in said county, that, on the ——— day of ——— last past, pursuant to a notice previously given, they met the selectmen of the town of ———, in said county, for the purpose of perambulating the lines between said towns, and renewing the marks and bounds thereon, but that a controversy exists between said parties, in renewing and establishing the lines and bounds of said towns; wherefore your petitioners pray your honors that the same may be run by commissioners to be appointed by your honors, and that your honors will appoint commissioners to run said lines, and to ascertain and determine the line or lines in dispute, and describe the same by courses and distances, and mention in their return suitable monuments or marks for the permanent establishment of such lines.

A. B., }
C. D., } *Selectmen of* ———.
E. F., }

Form of Commissioners' Report.

The undersigned, commissioners, appointed by the supreme judicial court held at ———, in and for the county of ———, on the ——— Tuesday of ———, A. D. 19—, to ascertain and determine the town lines in dispute between the towns of ——— and ———, after giving notice to all persons interested of the time and place of meeting, and after hearing all persons interested at

the time and place appointed, we ascertained and determined the following described lines to be the true boundary line or lines [*as the case may be*] between the towns of — and —, aforesaid, which line or lines [*as the case may be*] are described by courses and distances as follows, to wit: [*here give the line or lines by courses and distances,*] and have made and set stone monuments, marked T. L. at the beginning, angles and ends of the aforesaid several lines, courses and distances for the permanent establishment of such lines, and hereby make duplicate returns of our proceedings, one of which is hereby returned to the court aforesaid, and one to the office of the secretary of the State of Maine.

In witness whereof, we have hereunto set our hands this — day of —, A. D. 19—.

A. B., }
C. D., } *Commissioners.*
E. F., }

The validity and efficacy of the proceedings of the commissioners must be determined upon the facts appearing on the reports. 53 Me. 324.

If the report does not “ascertain and determine” the line, the “controversy” is not terminated, and commissioners may be appointed on a new petition. 53 Me. 324.

A report declaring that the commissioners do “award and determine” that a certain defined line “shall be the true boundary,” etc., does not make it certain that they did not establish a new line, instead of ascertaining and renewing the old one, and hence is insufficient. 53 Me. 324.

The decision of commissioners is conclusive, although the court may prevent report from becoming final until satisfied of its freedom from fraud and of its legal correctness. 65 Me. 200; 79 Me. 171.

In such proceeding costs are not allowed to either side. 79 Me. 171.

Report must show that commissioners “ascertained and determined” on oath the lines in dispute and describe them, etc. 76 Me. 30. Must be three commissioners. Ib.

When act of incorporation makes a fresh water and running stream a boundary of a town, in the absence of language indicating a different intention, the thread of the stream and not the bank is the boundary line. 66 Me. 546.

When line runs to the channel of such a stream and then runs down the channel the centre line down the channel is the boundary line. 75 Me. 332.

Acts of incorporation, which make a fresh water and running stream the boundary of a town, are to be construed in the same manner as deeds which make such a stream the boundary between conterminous proprietors; and the thread, not the bank, of the stream, is the boundary, in the absence of language indicating a contrary intention. 66 Me. 545.

Where two termini of a line between towns are established, and no intermediate conflicting point is indicated in the description, the line will be deemed to be a straight one. 66 Me. 354.

This rule was *Held*, to apply where natural boundaries were disregarded, and a point of land was cut off and made part of a town on the other side of a cove. Ib.

In the absence of evidence on the face of the earth, showing the original actual location of the town of Bremen, the last call in the act of incorporation is a line starting from the point of departure named, and running in such a course as to include Long island and Hog island, down to low water mark. "Crossing the bar," etc., means passing clear across the entire width of the bar on the line of low water; and when the western limit of the bar is reached, then a straight line from that point "to the first mentioned bound" is the true line. Ib.

The decision of commissioners (appointed under R. S. 1871, c. 3, § 43,) in ascertaining, determining and marking upon the face of the earth the common line between towns, is conclusive. 65 Me. 200.

By section forty-four, the compensation of the commissioners is to be apportioned "in equal proportion," upon the petitioners and respondents as parties, irrespective of the number of towns in either party. Ib.

The territorial limits of a town can be changed only by the authority of the legislature. 65 Me. 200.

When the precise locality of the common limit between adjoining towns is a subject of controversy the decision of commissioners, appointed under R. S. 1871, c. 3, § 43, to determine the line, is conclusive, and there seems to be no power in the court to reject their report simply because they may possibly have erred in judgment in ascertaining the true line. Ib.

When the channel of a river is named as the boundary between two towns, the line is the thread of the channel, not the thread of the river. 75 Me. 329.

The court may allow the commissioners a proper compensa-

tion for their services, and issue a warrant of distress for its collection from said towns in equal proportions. R. S. c. 4, § 111; 65 Me. 203.

The adjudication of commissioners is not conclusive on boundary line of adjacent owners. 89 Me. 212.

The findings of commissioners on questions of fact and conclusions of law are conclusive. 90 Me. 235.

Courts can only inquire into propriety of conduct and regularity of procedure. 90 Me. 235.

Commissioners need not be sworn. 90 Me. 235.

A commissioner who had previously run lines as surveyor for one of the towns is not disqualified. 90 Me. 235.

CHAPTER III.

TOWN MEETINGS.

Every town meeting, except in the cases mentioned in the two following sections, shall be called by a warrant signed by the selectmen. R. S. c. 4, § 2.

The first town meeting held in a town shall be called and notified in the manner prescribed in the act of incorporation; and if no mode is therein prescribed, by any justice of the peace in the same county. When a town, once organized, is destitute of officers, a meeting may be called on application to such justice for his warrant for the purpose, made in writing by any three inhabitants thereof. When, by reason of death, removal, or resignation, a majority of the selectmen do not remain in office, a majority of those remaining in office may call a town meeting. Ib. § 3.

If the selectmen unreasonably refuse to call a town meeting, any ten or more legal voters therein may apply to a justice of the peace in the county, who may issue his warrant for calling such meeting. When ten or more voters in writing request the selectmen to insert a particular thing in a warrant, they shall

insert it in the next warrant issued, or shall call a special meeting for the consideration thereof. Ib. § 4.

In either case, the warrant shall specify the time and place at which the meeting shall be held, and in distinct articles shall state the business to be acted upon at such meeting; and no other business shall be there acted upon. Ib. § 5. (See title Highways.)

The warrant may be directed to any constable of the town, or any person by name, directing him to warn and notify all persons qualified to vote at such meeting, to assemble at the time and place appointed. Ib. § 6.

Such meeting shall be notified by the person to whom the warrant is directed, by posting an attested copy thereof in some public and conspicuous place in said town seven days before the meeting, unless the town has appointed, by vote, in legal meeting, a different mode, which any town may do. In either case, the person who notifies the meeting shall make his return on the warrant, stating the manner of notice, and the time when it was given. Ib. § 7.

Sections four, five, six and seven apply to cities and the municipal officers of cities, the same as to towns and the selectmen of towns, and when any meeting thus provided for is called in cities, it shall be by warrants posted in each ward. R. S. c. 4, § 8.

The meetings of any village corporation may be notified by the person to whom the warrant is directed, by posting attested copies in two or more public and conspicuous places within the corporation limits seven days before the meeting, instead of in the manner provided by the act creating such corporation; provided that such corporation shall first at a legal meeting designate at what and how many places such notices shall be posted. Ib. § 9.

When omissions or errors exist in the records or tax lists of a town or school district, or in returns of warrants for meetings thereof, they shall be amended, on oath, according to the fact, while in or after he ceases to be in office, by the officer whose duty it was to make them correctly. If the original warrant is lost or destroyed, the return, or an amendment of it, may be made upon a copy thereof. Ib. § 10.

Town meetings for the choice of governor, senators and representatives, shall be on the second Monday of September, biennially. Const. art. 2, § 4, as amended.

Every person qualified to vote for governor, senators and representatives, in the town in which he resides, may vote in the election of all town officers, and in all the affairs thereof. R. S. c. 4, § 11; see Elections, c. 11, § 2.

Warrant for Annual Town Meeting.

To W. D. R., a constable of the town of —, in the county of —,

GREETING.

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of said town of —, qualified by law to vote in town affairs, to meet at the townhouse, in said town, on the — day of —, at — o'clock in the — noon, to act on the following articles, to wit:

First, to choose a moderator to preside at said meeting.

Second, to choose, etc. (*here insert such articles as are necessary*).

The selectmen hereby give notice that they will be in session for the purpose of revising and correcting the list of voters, at —, at — o'clock in the — noon on the day of said meeting.

Given under our hands at —, this — day of —, A. D. 19—.

_____, }
_____, } *Selectmen of —.*
_____, }

The proceedings at town meetings are regulated by the moderator and by the selectmen when acting as such. See moderator, post.

The Form of an Application to a Justice, when the Selectmen Unreasonably Refuse to Insert an Article in their Warrant.

To A. B., Esquire, one of the justices of the peace in and for the county of —.

The subscribers, being ten or more legal voters in the town of —, in said county, respectfully represent, that on the — day of — last past, we made a request in writing to the selectmen of —, to insert an article in their warrant for calling a town meeting, a copy of which is as follows: [*here insert copy of the article*;] yet the selectmen have unreasonably refused to comply with said request; wherefore, we request you to issue a warrant to call a meeting of the inhabitants of said town to act upon the article contained in said request.

[*Signatures of ten or more.*]

The Form of a Warrant upon said Application.

STATE OF MAINE.

[*Name of county*], ss.

To W. S., a constable of the town of —, in the county of —,

GREETING.

Whereas application has been made to me, a justice of the peace for said county, by ten or more legal voters in said town, to call a meeting of the

inhabitants of said town, to act upon the article hereinafter mentioned ; and whereas it has been made to appear to me that the selectmen of said town, upon request in writing duly made to them for that purpose, have unreasonably refused to insert an article in their warrant for a town meeting, issued next after said request to them, or to call a special meeting for the consideration thereof:

In the name of the State of Maine, you are hereby required to notify and warn all persons qualified by law to vote at such meeting, to assemble at —, in said town, on the — day of — next, at — o'clock in the — noon, to act upon the following subjects:

First, to choose a moderator to govern said meeting.

Second, to see if the town will [*here insert the article*].

Fail not to make due service of this warrant, and to return your doings thereon, at the time and place of meeting.

Given under my hand, this — day of —, A. D. 19—.

A. B., *Justice of the Peace*.

If the selectmen have neglected to call a meeting, omit the words "have unreasonably neglected to insert an article in their warrant for a town meeting, issued next after said request to them or to call a special meeting for the consideration thereof" and insert instead, "have unreasonably neglected to call a meeting to act upon said article."

The Form of the Constable's Return on the Back of any Warrant.

—, —, —, A. D. 19—. Pursuant to the within warrant to me directed, I have notified and warned the inhabitants of said town, qualified as therein expressed, to assemble at said time and place, and for the purposes therein named, by posting an attested copy of said warrant, at —, in said town, being a public and conspicuous place in said town, on the — day of —, being seven days before the meeting.

W. S., *Constable of*——.

If the town has appointed by vote, in legal meeting, a different mode of calling meetings, then the necessary changes should be made in the return.

The warrant and the various matters brought before the meeting by it, are subject to the decision of the meeting until final adjournment.

No objection to the validity of a vote, that it was passed near the close of the meeting and after a portion of the voters had retired.

Unless rights of third persons are affected it is competent to do any business at adjourned meeting that could have been done on the first day, may reconsider or modify any vote al-

ready passed or pass any other vote within the scope of the articles in the warrant. 7 Me. 405; 23 Me. 120; 55 Me. 433; 65 Me. 203.

Town meeting called to do business that requires a two-thirds vote may adjourn by a majority vote. 65 Me. 207.

Records best evidence of what took place at town meeting. 3 Me. 226; 74 Me. 60; 77 Me. 330.

If action required to be by two-thirds the record should show that two-thirds voted for it, otherwise the vote is ineffectual. No presumption that vote was by two-thirds—on contrary presumed to have been a majority vote. 65 Me. 68.

Warrant dated February 26, 1890, duly posted, called a meeting for the tenth day of March; held that a meeting on the tenth day of March, 1890, would be valid although year was not stated in the call. 87 Me. 219.

Return must show that attested copy was posted at a public and conspicuous place within the town at least seven days before the meeting and must be signed by the constable. 25 Me. 561; 55 Me. 193; 56 Me. 530.

If town has appointed by vote in legal meeting a different mode, party setting up the legality of the meeting must prove such appointment. 55 Me. 65.

Return that copy was posted in a "public place" is insufficient. 34 Me. 575.

"As the law directs" is insufficient. 65 Me. 342.

Not necessary for officer to personally post the copy.

Return that he "caused to be posted up an attested copy of the warrant" is good. 82 Me. 180.

But it seems that notice must be posted under the eye of the constable. Ib.

It was not necessary, that the selectmen's warrant for calling a town meeting in 1803, should be under seal. 12 Me. 487.

It is not necessary for the assessors to insert in the warrant for calling a town meeting, a notice of the time and place of their intended session to receive evidence of the qualification of voters; such notice may be posted up otherwise. 3 Me. 305.

An indictment, for voting twice at one balloting for the choice of a selectman, cannot be sustained, unless such meeting was legally warned. 25 Me. 561.

There cannot be a legal town meeting, unless it be originally held at the place appointed for the meeting, in the warrant, by which it is called. 13 Me. 466.

A warrant for a town meeting is sufficient, if it gives notice with reasonable certainty of the subject matter to be acted on. 60 Me. 568.

An article, in a warrant for a town meeting, to see what measures the town will take to build a certain bridge, or any matters and things relating thereto, is sufficient to authorize the raising of money for that purpose. 8 Me. 334.

An article, "to see what measures the town will take to provide a workhouse or house of correction for the reception, support, and employment of the idle and indigent, and such other persons as by law are liable to be sent to such house, for the purposes aforesaid, and for the superintendence of the same," was sufficient to authorize a vote empowering the selectmen to contract with some person for the support of the poor for one year; such town having practiced for several years, the making of similar contracts, under similar articles. 10 Me. 317.

In a warrant calling a town meeting to act upon the acceptance of a town way, a general description of the way is sufficient. 35 Me. 242.

When the only article in the warrant for a town meeting is "to see if the town will loan its credit to aid in the construction of a railroad," the article is sufficient to give the inhabitants notice that a proposition to subscribe for stock will be acted on. 60 Me. 568.

A public act authorizing town aid to railroads, need not be noticed in the article in the warrant to see if the town will vote such aid. 65 Me. 203.

A town meeting is called for the purpose of each and every article in the warrant, though one article requires a majority vote, and another a two-thirds vote. Ib.

A town meeting, called by justice of the peace, without an unreasonable refusal by the selectmen, is illegal. 53 Me. 389.

If a majority of the selectmen were never requested to call a town meeting, it cannot be said they "unreasonably refuse," within the meaning of R. S. of 1857, c. 3, § 4. Ib.

To render the doings of a town meeting legal, it should appear that attested copies of the warrant for the meeting were posted in public and conspicuous places, and that the places of

posting were within the town. 51 Me. 29; 55 Me. 61; 55 Me. 193; 49 Me. 346; 48 Me. 451.

And it must appear in the return that it had been done at least seven days before the meeting. 25 Me. 561; 26 Me. 172.

The legality of a town meeting for the choice of officers, is sufficiently proved by showing that it was notified in due form, by those claiming to act as the legally qualified officers of the preceding year. 7 Me. 426.

If the constable's return is defective, in not showing the manner in which the meeting was warned, it does not follow that the proceedings of the inhabitants at the meeting are necessarily void, to all intents, since in some cases, the objection may be lost on the ground of waiver, or estoppel. Ib.

Where the return upon a warrant for a town meeting did not show that the copies posted were attested, or that they were posted in conspicuous places, evidence to these points will not cure the defect, in a penal action. 29 Me. 523.

An officer's return that he posted the notices in a "public" place, without saying in a "public *and conspicuous*" place, is insufficient. 34 Me. 575.

The return on a warrant calling a town meeting, must bear the sign manual of the constable who executed it. It is not enough that his name was written at his request, in his presence, after having heard it read. 56 Me. 390.

If the return on a warrant for calling a town meeting, does not show how the meeting was warned, it will be presumed, in the absence of other proof, that it was warned in the mode agreed upon by the town. 8 Me. 334.

It is no valid objection to such return, that it bears date on the day of the meeting. 8 Me. 334; 12 Me. 487.

In an action against the moderator of a parish meeting, for refusing the plaintiff's vote, the constable's return not showing how the meeting was warned, the defect is incurable, and fatal to the action. 7 Me. 426.

If a town "has appointed by vote, in legal meeting, a different mode" of notifying its meetings, it is incumbent upon the party desiring to establish the legality of the meeting, to show it was called in accordance with the mode prescribed by the town. 55 Me. 61.

Where it was required by a town, that notice of its meetings should be posted at the townhouse on a specified street, posting

at "the townhouse," was *Held*, sufficient, it not being shown that more than one townhouse existed. 35 Me. 242.

Under the statutory provision that the notice for a town meeting shall be posted seven days, unless the town appoints by vote in legal meeting a different mode, the defendant town voted that its meetings, (with certain exceptions named,) should be notified by posting a notice therefor not less than three months. *Held*, that a town by-law or ordinance requiring so long a notification is unreasonable, and on that account unauthorized and void. 66 Me. 585.

An article in a warrant to raise money for certain purposes is not exhausted of its efficacy by a single vote raising a certain sum at the same or an adjourned meeting. 7 Me. 426.

Although a town meeting, at which certain persons were elected selectmen of the town, was invalid by reason alone of a defect in the constable's return upon the warrant, they were, nevertheless, selectmen de facto; and, as such, had a right to call other town meetings during their official term. The question of the validity of selectmen, who issued a warrant for a town meeting during their official term, is not open to the town when it appears that they were officers de facto, and that the meeting was otherwise legal. 57 Me. 541.

One of the purposes set forth in a warrant for a town meeting was to see "if the town will vote to have their townhouse in said hall." *Held*, that this article authorized a vote to consent to have a town hall in the hall referred to. 101 Me. 416.

There is no rule of law that the officers of a city or town must be acquainted with the contents of all its records. 30 Me. 466.

A liberal construction should be made to support the proceedings of towns, when no one is injured thereby. 17 Me. 444.

The inhabitants of a town, against whom a warrant of distress has issued, may vote to raise money, either by loan or assessment, to satisfy the same. 20 Me. 178.

It is not necessary that a newly incorporated town should accept the act of incorporation. The rule applies only to private corporations. 21 Me. 58.

Towns cannot authorize their agents to do what they have no right to do. 2 Kent. Com. 292.

Towns derive all their powers as well as existence, from the legislature. 14 Me. 377; 82 Me. 43.

Selectmen may employ counsel in behalf of the town. 14 Me. 20.

A town may, by vote, ratify the proceedings of a prior illegal meeting, or may rescind a vote passed at a prior meeting, unless the rights of others intervene. 55 Me. 193, 433.

Towns may adjourn town meetings from time to time, and place to place, as they may think proper. 48 Me. 440.

A vote that is part legal and part illegal will be valid as to the legal part if it can be separated from the illegal part. 51 Me. 610.

Towns have no authority to appropriate money for the celebration of the Fourth of July. 1 Allen 103; 82 Me. 43. The power of cities depends upon their several charters.

A town may let portions of its townhouse. 3 Allen 9; 66 Me. 585.

Signature of one selectman to contract will not bind town. 53 Me. 437.

Majority of committee should sign a contract. Signing by chairman not sufficient. 59 Me. 485.

Town not liable for money loaned its officers unless it is proved that the officers had authority to hire the money, or that the hiring has been ratified by the town, or that the money has been applied to the legitimate uses of the town and such application has been ratified by the town. Even the payment of a town debt with money hired without authority will not be sufficient to charge the town, unless the town has ratified the payment. 81 Me. 344.

CHAPTER IV.

ANNUAL TOWN MEETINGS.

In every town where the selectmen are not the assessors, the assessors, on or before the first day of August in each year, in which an election of governor, senators and representatives is held, shall prepare a list of the persons whom they judge to be constitutionally qualified to vote therein at such election and

deliver it to the selectmen. The selectmen of every town, on or before the eleventh day of August in such year, shall prepare a corrected list of persons so qualified. R. S. c. 5, §§ 34 and 35.

For lists for annual meetings, see Lists of Voters, post.

For provisions regarding correction of lists, etc., see Elections, post.

Form of Warrant for Calling Annual Meeting for Town Purposes.

STATE OF MAINE.

[*Name of county*], ss.

To W. S., a constable in the town of ———, in said county,

GREETING.

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of the said town of ———, qualified by law to vote in town affairs, to assemble at ———, in said town, on the ——— day of ———, 19—, at ——— o'clock in the ——— noon, to act on the following articles, to wit:

First, to choose a moderator to preside at said meeting.

Second, to choose all necessary town officers for the year ensuing.

Third, to see if the town will grant and raise such sums of money as may be necessary for the maintenance and support of schools and the poor, and repair of roads and bridges, and to defray all other town charges for the ensuing year.

The selectmen give notice that they shall be in session for the purpose of revising and correcting the list of voters, at ———, at ——— o'clock in the ——— noon, on the day of said meeting.

Given under our hands, at ———, this ——— day of ———, A. D. 19—.

A. B., }
C. D., } *Selectmen of ———.*
E. F., }

Form of the Constable's Return.

———, ———, ———, A. D. 19—. Pursuant to the within warrant to me directed, I have notified and warned the inhabitants of said town, qualified as therein expressed, to assemble at said time and place, and for the purposes therein named, by posting up an attested copy of said warrant, at ———, in said town, being a public and conspicuous place in said town, on the ——— day of ———, being seven days before the meeting.

W. S., *Constable of ———.*

Annual town meetings shall be held in March and the voters shall then choose by a major vote, a clerk, three, five or seven inhabitants of the town to be selectmen and overseers of the poor, when other overseers are not chosen, three or more assessors, two or more fence viewers, treasurer, surveyors of lumber, sealers of leather, measurers of wood and bark, constables, collectors of taxes and other usual town officers; and if one-third of the voters present are in favor thereof, they shall

choose, by a major vote, one auditor of accounts, all of whom shall be sworn. Treasurers and collectors of towns shall not be selectmen or assessors, until they have completed their duties as treasurers and collectors and had a final settlement with the town. Provided, however, any town electing three selectmen, three overseers of the poor and three assessors, if they shall vote so to do, may elect one member of each of the above named boards for one year, one for two years and one for three years, and at each annual meeting thereafter one member of each of the said boards shall be elected for a term of three years; towns electing more than three selectmen, three overseers of the poor and three assessors, may by vote determine how many of each of said boards shall be elected annually and the tenure of their officers. The treasurer and collector of taxes of cities and towns may be one and the same person. R. S. c. 4, § 12.

Moderator, town clerk, selectmen, assessors and overseers of the poor, treasurer, auditor, school committee, town agent and road commissioners shall be elected by ballot, and the other said officials by ballot, or if not so elected, they shall be appointed by the selectmen. The town agent shall act under the direction of the selectmen, and shall receive from the treasury of the town such compensation for his services as may be fixed by vote of the town; otherwise, as the selectmen shall allow. R. S. c. 4, § 14.

Form of Appointment by Selectmen.

SELECTMEN'S OFFICE.

Town of ———.

———, A. D. 19 —.

To ———, of ———, in the county of ——— and State of Maine:

The town of ——— at its last annual meeting having failed to elect ———, we do in accordance with the provisions of the laws of the State of Maine, hereby appoint you as a ——— within and for the town of ——— for the ensuing year.

Given under our hands this ——— day of ———, 19—.

———, }
 ———, } *Selectmen of* ———.
 ———, }

STATE OF MAINE.

County of ———, ss.

———, 19 —.

Personally appeared the above named ———, who has been duly appointed by the selectmen as a ——— in said town, and took the oath necessary to qualify him to discharge said duties for the ensuing year, according to law.

Before me,

———, *Justice of the Peace [or Town Clerk].*

This certificate and oath must be recorded by the town clerk.

Each town at its annual meeting may elect and all towns with over sixty-five hundred inhabitants shall elect by major vote a road commissioner, who shall hold his office for the term of one year from the date of his election. Any town may, at its option, elect not more than three commissioners, whose powers and duties shall be the same as prescribed for a single commissioner. No person shall, at the same time, hold the office of road commissioner and selectman. R. S. c. 4, § 13.

If a person elected as road commissioner fails to qualify before the first Monday of April, the office shall be deemed vacant, and shall be filled by the selectmen by appointment; and in the event of a vacancy caused by death or otherwise, the selectmen shall appoint some competent person to serve as road commissioner until the next annual meeting, who shall qualify and perform the duties of said office. If a town fails to elect a road commissioner at its annual meeting, the money raised and assessed for the repair of bridges and ways as provided by section seventy of chapter twenty-three shall be expended for that purpose by the selectmen; if after the choice of any officer not required to be chosen by ballot, there is a vacancy in any such office, the municipal officers may fill such vacancies by the written appointment of proper persons, who shall be summoned by the constable to appear and take the oath of office provided in section twenty-five subject to the penalties provided in section twenty-six of chapter four of revised statutes. Such appointment and oath shall be recorded as in case of a choice by the town. No person shall be so appointed without his consent. R. S. c. 4, § 15.

During the election of moderator, the clerk shall preside; when he is absent from such meeting, either of the selectmen or of the assessors, and if neither of those is present, any constable may do all the duties of clerk in receiving and counting the votes for moderator. The moderator may call on the voters to give in their ballots for a clerk *pro tempore*, who shall be sworn by the moderator, or a justice of the peace. R. S. c. 4, § 16.

The town clerk, before entering on the duties of his office, shall be sworn before the moderator, or a justice of the peace, truly to record all votes passed in that and other town meetings during the ensuing year and until another clerk is chosen and sworn in his stead, and faithfully to discharge all the other duties of his office. Ib. § 17.

The clerk of any town may appoint a citizen thereof his deputy, who may in the clerk's absence, perform all the duties of said office with the same effect as if done by the clerk.

Form of Appointment.

I [*or we, if by municipal officers,*] hereby appoint — — to perform the duties of town clerk [*or during the clerk's absence from his office or until a clerk is elected*] as set forth in section eighteen, chapter four of the Revised Statutes, in the town of —, during my absence from the clerk's office.

——, Clerk [*or municipal officers*] of the town of —.

Said deputy, or person appointed by the municipal officers, shall be sworn faithfully to perform the duties of his office before he enters thereon.

The clerk may also appoint a woman, otherwise qualified by the constitution, who in his absence may so far act as deputy clerk as to receive and record chattel mortgages and other papers, and make certified copies of the records in the clerk's office. R. S. c. 4, § 18.

Every person notified [in accordance with R. S. c. 4, § 25] that he has been elected to office, and who neglects to take the oath of office within seven days, except officers for whose neglect a different penalty is provided, forfeits five dollars, two-thirds to the town and one-third to the prosecutor. R. S. c. 4, § 26. *Held*, to apply to offices of no profit. 1 Me. 249.

Where statute requires that certain town officers shall be freeholders, choice of a person who is not a freeholder is merely void. 29 Me. 531.

Improper to sell office of constable at auction or otherwise. 11 Me. 307.

Towns and cities may choose by ballot, park commissioners, to hold office one, two and three years respectively, and after the first year choose annually a commissioner for three years in place of one whose term expires; they shall have the care and superintendence of the public parks and direct the expenditures of all moneys appropriated for the improvement of the same. R. S. c. 4, § 88.

CHAPTER V.

MODERATOR—POWERS AND DUTIES OF.

At every town meeting a moderator shall be first chosen, and sworn by a justice of the peace, or by the person presiding at the meeting when he is chosen. Said moderator shall regulate the business of the meeting; and when a vote declared by him is, immediately after such declaration, questioned by seven or more, he shall make the vote certain by polling the voters, or in such other way as the meeting directs. R. S. c. 4, § 29.

The moderator shall be elected by ballot. R. S. c. 4, § 14.

During the election of moderator the clerk shall preside; when he is absent from any such meeting, either of the selectmen or of the assessors, and if neither of those is present, any constable may do all the duties of clerk in receiving and counting the votes for moderator. The moderator may call on the voters to give in their ballots for a clerk *pro tempore*, who shall be sworn by the moderator, or by a justice of the peace. R. S. c. 4, § 16.

The record of the meeting should show that the moderator was sworn according to law. If the record is silent on the subject, parole evidence that the moderator was sworn, should be of a direct and positive character. 56 Me. 390.

Oath of Moderator.

You, A. B., having been chosen moderator of this meeting, do solemnly swear that you will faithfully and impartially discharge all the duties of said office. So help you God.

By “polling the voters” is understood any mode of counting the polls or heads, so as to make the count certain.

Several modes of “polling the voters” are in common use. The moderator may call each name on the check list, and the voter immediately makes answer to the moderator how he wishes to vote on the question then pending before the meeting. The moderator denotes the answer. When all the names have been called, the moderator counts those voting for and those voting against the question, and declares the result.

He may poll the voters by dividing the meeting, in which case the moderator directs those voters who are in favor of the pending question to go by themselves on one side of the house, and those who are opposed to it to go by themselves on the other side of the house. Each side is then counted and the result declared.

No appeal lies from the decision of the moderator on a question of order. Notwithstanding the statute does not recognize the right of appeal, the moderator may, if he see fit so to do, submit the question of order to the meeting.

The method of transacting business in town meeting is not governed by any fixed provisions of statute, nor does the validity of the vote depend upon the observance or non-observance of parliamentary law. It is prudent, however, to follow well-established forms and rules of procedure. Town meetings, like all other deliberative bodies, may adopt rules for the ordering of business, and these rules may be set aside, waived or changed. The all-essential thing is to get at the will of the majority of the voters upon such subject-matters as are properly before the meeting. 110 Mass. 433; 127 Mass. 408.

No person shall speak in meeting before leave is obtained of the moderator, nor when any other person is speaking; and all shall be silent at the command of the moderator, or forfeit to the town one dollar for every breach of such order. R. S. c. 4, § 30.

If any person, after notice from the moderator, persists in disorderly conduct, the moderator may direct him to withdraw from the meeting; and by his refusal he forfeits three dollars to the town; and the moderator may cause him to be removed from the meeting by a constable, and detained in confinement for three hours, unless the meeting is sooner dissolved or adjourned. *Ib.* § 31.

Disorderly behavior in town meetings is a misdemeanor at common law, and punishable by indictment. 16 Mass. 384.

Town meetings for the choice of governor, senators, and representatives, shall be as the constitution directs; and the foregoing sections are not applicable to them. R. S. c. 4, § 32.

Conversation by the moderator and others in town meeting, relative to a subject legally under its consideration, cannot be proved as evidence against the town. 30 Me. 157.

Liable for refusing to receive legal vote. 7 Me. 411 and note. See also Proceedings at Elections.

Inhabitants of a town who are authorized to vote in town affairs, have a right to adjourn town meetings from time to time and from place to place as they may think proper. Immemorial usage has sanctioned such right, and it may properly be exercised, unless prohibited by some statute. It is not necessary that the record should state any reason for the adjournment. The voters assembled are the sole judges of that. 48 Me. 444.

At a town meeting a person was chosen moderator without the use of the check list as required under the laws of Massachusetts; persons were voted for as selectmen, declared elected and sworn; other business was done; it was voted to adjourn for a week and the moderator declared the meeting adjourned. At the adjourned meeting it was voted that, as the omission of the check list had rendered the election of the moderator of doubtful legality, a moderator should be chosen; a new moderator was accordingly elected with the check list; and the meeting then chose other persons as selectmen. *Held*, on information in the nature of a quo warranto against the persons chosen selectmen at the first meeting, that they were not entitled to the office. 111 Mass. 256.

CHAPTER VI.

OATHS OF TOWN OFFICERS.

Form of Oath to be Administered to the Moderator.

You, —, having been chosen moderator of this meeting, do solemnly swear that you will faithfully and impartially discharge all the duties of said office. So help you, God.

Form of Oath of Town Clerk.

You, —, having been elected town clerk of the town of —, do swear that you will truly record all votes passed in this or any other town meetings which may be held in this town during the ensuing year, and until another clerk shall be chosen and sworn in your stead, and also that you will faithfully discharge all the other duties of said office. So help you, God.

The town clerk or any two of the selectmen shall forthwith make out a list of the names of all persons chosen into office, of

whom an oath is required by law, and deliver it to a constable with a warrant to him directed, and he shall, within three days thereafter, summon each person therein named to appear before the town clerk, within seven days from the time of notice, to take such oath of office; and, at the end of ten days after receiving his warrant, the constable shall return it, or forfeit six dollars to the town; and the town shall allow him a reasonable compensation for his services. R. S. c. 4, § 25.

Form of Warrant to Notify Officers to Take the Oath.

To ———, a constable of the town of ———.

The following is a list of persons who were this day chosen into office, at a meeting of the inhabitants of the town of ———, and of whom an oath is by law required, and the offices to which they were respectively chosen, to wit:

A. B., C. D., *Constables.*

E. F., G. H., *Fire Wards.*

&c., &c.

You are hereby required, in the name of the State of Maine, within three days from the date hereof, to summon each of the persons therein named to appear before the town clerk within seven days from the time you shall give such notice, and take the oath of office by law required.

Hereof fail not, and make due return of this warrant, and of your doings thereon, to me, within ten days from the date hereof.

Given under my hand this — day of —, A. D. 19—.

W. A., *Town Clerk of ———.*

Form of Return by a Constable.

March —, 19—. Agreeably to the within warrant, I have notified the persons therein named to appear and take the oath of office, as herein directed.

A. B., *Constable of ———.*

Every person so notified, neglecting to take such oath within said seven days, except officers for whose neglect a different penalty is provided, forfeits five dollars, two-thirds to the town, and one-third to the prosecutor. R. S. c. 4, § 26.

Any town or parish officer may be sworn by the moderator in open town meeting, town or parish clerk, or by any person authorized by law, who shall give to the officer sworn, except when sworn in presence of such clerk, a certificate of the oath administered, which he shall return to such clerk to be filed. In either case the clerk shall record the name of the officer and of his office, by whom sworn, and the time of taking the oath and returning the certificate. Any town, school district, parish or corporation clerk elected to any office and sworn, may record his

own election, the fact that he was sworn, and when and by whom. The record herein required shall be sufficient evidence that such officer was sworn. If any officer fails to return such certificates or any clerk to record such oath within ten days, he forfeits five dollars. Ib. § 27.

Form of Oath of Town Officers.

You, —, having been duly elected — of the town of —, do swear that you will faithfully and impartially perform the duties assigned you by law. So help you, God.

The moderator must be sworn, or the meeting is illegal. Moderator may be sworn by a justice of the peace or by the person presiding at the meeting when he is chosen. R. S. c. 4, § 29. See title Moderator. As to other officers see provisions relating to them under appropriate titles.

The time specified for taking the oath is directory.

These forms are applicable to wardens and clerks of wards in cities, merely varying the phraseology to conform to the facts.

The certificate of the oath of office should state the day on which it was administered, and should be signed by the person who administered the oath.

Certificate of Oath.

STATE OF MAINE.

County of —, ss.

—, 19—.

Personally appeared —, who, having been elected — of the town of —, made oath that he would faithfully and impartially perform the duties of said office according to the constitution and laws of the State of Maine.

Before me,

—, *Justice of the Peace.*

CHAPTER VII.

BY-LAWS AND ORDINANCES.

(Power to Pass.)

Towns, cities and village corporations may make by-laws or ordinances, not inconsistent with law, and enforce them by suitable penalties, for the purposes and with the limitations following. R. S. c. 4, § 93.

First. For managing the prudential affairs, with penalties not exceeding five dollars for one offense, subject to the approval of the county commissioners, or a judge of the supreme judicial court.

(“Prudential affairs” embraces that large class of miscellaneous subjects affecting the accommodation and convenience of the inhabitants which have been placed under the municipal jurisdiction of towns, by statute or by usage, such as public hay scales, burying grounds, wells and reservoirs, public clocks, etc. 93 Me. 73; 12 Pick. 231.)

Second. For establishing police regulations for the prevention of crime, protection of property, and preservation of good order, and to regulate the use and manner of use of bicycles in the street in the night time.

(Under this section any reasonable provision for the health, security, comfort and protection of citizens may be adopted.)

Third. Respecting infectious diseases and health.

Fourth. For regulating the going at large of dogs. (See laws relating to protection of sheep.)

Fifth. Respecting the measure and sale of wood, bark, and coal brought to market, and teams coming therewith.

Sixth. For setting off portions of their streets for sidewalks, keeping them clear of snow and other obstructions, regulating the use thereof, and for planting and preserving trees by the side thereof, and for the proper protection and care of public parks and squares within the same and all monuments, statues and erections thereon.

Seventh. Respecting the location and protection of monuments, boundary-stones, curb-stones, stepping-stones or horse-blocks, trees, lamp-posts, posts, and hydrants, and all other things placed within the limits of their roads, ways and streets, by municipal purposes; and no such objects placed as aforesaid, if located in accordance with such by-laws and ordinances, shall be deemed defects in such road, way or street.

Eighth. Respecting the erection of buildings therein, and defining their proportions, dimensions and the material to be used in the construction thereof, and any building erected contrary to a by-law or ordinance adopted under this specification is a nuisance.

Ninth. For the regulation of all vehicles used therein, by establishing the rates of fare, routes and places of standing, and

in any other respect; but by-laws and ordinances for this purpose shall be published one week at least before they take effect, in some newspaper printed therein, or if there is no newspaper printed therein, such by-laws and ordinances shall be posted at least one week before they take effect, in two public and conspicuous places therein, and published once in some newspaper printed in the county in which said town is situated; and penalties for their breach shall not exceed twenty dollars for one offense, to be recovered by complaint to the use of such city, town or corporation.

Tenth. For protection of persons against injury from the sliding of snow and ice from roofs of buildings; but the municipal authorities shall notify the owners of the buildings of by-laws or ordinances adopted under this specification, and if such owners do not comply with them in thirty days after notice, they shall be liable for all injury sustained by any person in consequence thereof; and said authorities, at the expense of their cities, towns or corporations, may place the required guards or other obstructions on the roofs of such buildings, and the reasonable charges therefor may be recovered of such owners.

Eleventh. Cities may establish localities for, and regulate the sale of fresh meat and fish therein, and fix penalties for breach thereof.

Twelfth. Cities and all towns of more than five thousand inhabitants may establish and adopt by-laws and ordinances regulating the purchase and sale of articles usually bought of old junk dealers and dealers in second-hand articles, and the pawning of articles with pawnbrokers, and may therein prescribe conditions to be observed by buyers and sellers, pawners and pawnbrokers, to prevent or detect the sale or purchase of stolen goods; and suitable penalties may be prescribed in such by-laws and ordinances.

Municipal ordinances are in derogation of the common law and must be strictly construed. They cannot be enlarged by implication. 102 Me. 272.

CHAPTER VIII.

TOWN—POWERS AND RIGHTS.

In the construction of statutes the word "town" includes cities and plantations, unless otherwise expressed or implied. R. S. c 1, § 6, par. 19.

By article twenty-two of the amendments to the constitution of Maine, it is provided that "no city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities shall exceed five per centum of the last regular valuation of said city or town; provided, however, that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made."

"No city or town shall hereafter create any debt or liability," is held that assuming obligations of government laid upon it by law it does not "create" indebtedness. The provision, it is said, "only applies to debts and liabilities which a city, in its corporate character, and as an artificial person, voluntarily creates." 17 Oregon, 453.

The town's own valuation, and not that made by the state board of commissioners, is the test by which to ascertain the amount of indebtedness which settles the constitutional limit. 92 Me. 292.

The court expresses a willingness, in a proper case, to adopt the rule adopted by many authorities, which allows a municipal corporation, although its indebtedness has reached the constitutional limit, to make time contracts, in order to provide for certain municipal wants which involve only the ordinary current expenses of municipal administration, provided there is to be no payment or liability until the services be furnished, and then to be met by annual appropriations and levy of taxes; so that each year's services shall be paid for by each year's taxes. 92 Me. 292.

“Last regular valuation” means that of city assessors. 92 Me. 297.

Bonded and floating indebtedness is prohibited. 92 Me. 297.

The constitution forbids implied as well as expressed indebtedness. 92 Me. 297.

The manner in which the indebtedness is created is immaterial for the result is to subject the city to a present liability, direct or indirect, which the tax-payers eventually will be called upon to meet. 179 Mass. 332.

Purchase of land to be paid for on instalment plan, title not to pass until fully paid for, is within the inhibition. 179 Mass. 322; 92 Me. 303.

A town has a right to hire money to refund the debt which it owed in 1878, when the amendment to the constitution limiting municipal indebtedness took effect, even if this debt was then in excess of the five per cent. limit. In such cases a town cannot constitutionally create a new or additional debt while the former debt remains unpaid, to the extent of the debt limit, nor can it hire money to pay a debt thus unlawfully created. If a town, however, does create unconstitutionally such an additional debt, and hires money to pay both classes of debt, indiscriminately the taint of the unlawful part permeates the whole loan, and makes it uncollectible. When a town's debt is in part lawful and in part unlawful by reason of its being in excess of the constitutional debt limit, a vote to issue bonds “to fund the town debt” applies to the unlawful part of the debt as well as to the lawful part. And bonds issued in pursuance of such a vote, are wholly invalid and uncollectible. The increase of a town debt, due to the accretions of unpaid interest, on existing unlawful indebtedness, is not the creation of a new debt, within the meaning of the constitution. 105 Me. 517.

A temporary loan in contemplation of article twenty-two of the amended constitution, is one made for a temporary purpose to be paid during the municipal year in which it is made, for taxes assessed and collected within the same year. And if such loan although temporary in its inception, or any part thereof, is carried over, in any form, into the next municipal year, it then loses its temporary character and becomes a debt or liability of the city within the inhibition of the aforesaid article of the amended constitution. 100 Me. 30.

Unlike a statute which applies only to a liability created for a

“purpose not authorized by law,” the constitutional amendment applies with equal force against a liability whether created for a legal or illegal purpose. It makes no distinction whatever in this respect. The court is clothed with ample jurisdiction to prevent it, whether the debt or liability, which is calculated to violate the constitutional prohibition, is created for a legal or illegal purpose. The purpose for which the debt incurred or contemplated is immaterial, if it exceeds the five per cent. limitation specified in the amendment. 100 Me. 30.

A town may possess two classes of powers and rights, public and private. In all its private relations it maintains the character of an individual. In its public capacity it is merely an agent of the state and subject to its control. While a town cannot raise money by taxation for the purchase of property for any purpose other than a municipal purpose, yet it may lawfully own, control and manage such property disconnected from any public use and for its own emolument, profit and advantage; and, in the absence of prohibiting statutes, it may receive and hold in its corporate capacity gifts of either real or personal estate. But if the town holds such property for its profit or gain, it is liable for negligence in the management thereof to the same extent that a business corporation or an individual would be. 105 Me. 517.

A town in this state has two distinct functions, one as a corporation for the particular benefit of its inhabitants, the other as a governmental agency for the general benefit of the public. 99 Me. 179.

CHAPTER IX.

TOWNS—MONEY POWERS, MAY RAISE MONEY FOR CERTAIN PURPOSES.

The voters, at a legal town meeting, may raise the necessary sums for the support of schools and the poor; making and repairing highways, town ways and bridges; purchasing and fencing burying grounds; maintaining private burying grounds established before eighteen hundred and eighty; purchasing or building and repairing a hearse and hearse house for the exclu-

sive use of its citizens; and for other necessary town charges. R. S. c. 4, § 71.

“Raise” means by taxation and not by borrowing. 119 N. Y. 280; 98 Mich. 140; 103 Mich. 301.

Towns cannot borrow money and issue notes of a commercial character for the execution of their ordinary business, unless expressly or impliedly authorized by statute. 70 Me. 262.

A town cannot assess or borrow money except for purposes strictly within the line of its duty. It can effectually act even in such cases, only in legal town meeting, called, notified and held in the manner prescribed by law. The particular subject-matter upon which action is called for must be distinctly specified in the notice. If any prescribed step is omitted, the inhabitants and hence the town itself are not bound by the result. Whoever deals with a town or its officers must bear in mind these bulwarks about the property of the inhabitants of the town, and make sure beforehand, not only that the proposed contract is clearly within the legal powers of the town, but also that such power is exercised in the legal mode. 91 Me. 370.

That a town, in the absence of statute or constitutional restriction, has power to borrow money for a legal town purpose and within the limits of that purpose, without special statute authority, is now conceded. If money is needed for the performance of a town duty and the state has not commanded an assessment of taxes for it, the majority of the inhabitants of a town acting in a legal town meeting under a sufficient warrant can bind all the inhabitants in determining to borrow part, and even all of the money rather than raise it at once from taxes. But this power of a town to borrow money is strictly limited to money necessary for the discharge of its legal liabilities. It is limited in amount as well as in purpose, and it must be exercised by the town in town meeting upon proper warrant, and by vote either authorizing the act of borrowing beforehand, or afterward ratifying the prior act. It is not enough that the money was paid to some town officer and by him used in discharging some legal duty or liability of the town. A highway surveyor cannot borrow money, and expend it on the roads within his jurisdiction, and thereby bind the town to repay the money. There must be legal action in legal town meeting before the town becomes legally liable. Such is now the established law in this state. Such is also the law in Massachusetts whence we derived our town system. 91 Me. 371.

The “necessary charges” arising within any town include expenses in conducting its municipal business; as the payment of town officers; the support or defense of actions in which towns are parties; the erection and maintenance of guideboards, the erection of townhouses, market houses, and workhouses; the maintenance of watch and ward; equipment of poor soldiers, and the discharge of duties imposed on towns by the militia law; the purchase of standard weights and measures; the maintenance of pounds and public clocks; the indemnification of owners of buildings destroyed to stop fire; and all expenditures required by law. When the laws impose upon towns any duty, the means required for the discharge of that duty would be a “necessary charge.”

The phrase “other necessary town charges” is construed in *Stetson v. Kempton*, 13 Mass. 278, as follows: “That, in addition to the money to be raised for the poor, schools, etc., towns might raise such sums as should be necessary to meet the ordinary expenses of the year; such as the payment of such town officers as they should be obliged to employ, the support and defence of such actions as they might be parties to, and the expenses they would incur in performing such duties as the laws imposed; as the erection of powder houses, providing ammunition, making and repairing highways and town roads, and other things of a like nature; which are necessary charges, because the effect of a legal discharge of their corporate duty. The erection of public buildings for the accommodation of the inhabitants, such as townhouses to assemble in, and market houses for the sale of provisions, may also be a proper town charge, and may come within the fair meaning of the term ‘necessary’; for these may be essential to the comfort and convenience of the citizens. But it cannot be supposed that the building of a theatre, a circus, or any other place of mere amusement, at the expense of the town, could be justified under the term ‘necessary town charges.’ Nor could the inhabitants (in the absence of statutory authority) be lawfully taxed for the purpose of raising a statue or a monument, these being matters of taste, and not of necessity.” 63 Me. 237; 196 Mass. 224.

“The words ‘other necessary town charges,’ do not constitute a new and distinct grant of indefinite and unlimited power to raise money for any purpose whatsoever, at the will and pleasure of a majority. They only embrace all the incidental expenses arising directly or indirectly in the due and legitimate exercise

of the various powers conferred by the statute." 52 Me. 598; 51 Me. 176.

The words "and for other necessary town charges," authorize towns to employ a reasonable number of agents or attorneys to advance or protect the rights of the former, before any legally constituted tribunal; they do not authorize a town to raise and expend money to send lobbyists to the legislature. 54 Me. 250.

The inhabitants of a town, against whom a warrant of distress has issued, are authorized to raise money, with which to satisfy the same, either by loan or assessment; and if by assessment, either at once, or by installments. 20 Me. 178.

In the absence of express authority, the inhabitants of a town cannot be legally assessed to pay a reward offered by the vote of the town for the apprehension and conviction of a person who has committed a murder in such town. 51 Me. 174.

The legislature has by special acts conferred upon many of the cities in this state authority to offer rewards for the prevention of crimes and detection of criminals.

A town has authority to provide for the support of a public clock, and to assess the expense thereof upon the inhabitants of the town. 12 Pick. 227.

Cities and towns may raise money to procure the writing and publication of their histories, to celebrate any centennial or other anniversary of the settlement or incorporation of such city or town, and to publish the proceedings of any such celebration, to defray the expenses of the observance of memorial day and of old home week, and a sum not exceeding five thousand dollars in any one town for erecting a suitable monument in memory of the soldiers who sacrificed their lives in defense of their country in the war of eighteen hundred and sixty-one, and a reasonable sum to secure, grade and care for a lot appropriate for such a monument. R. S. c. 4, § 72.

Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes, by a road commissioner or commissioners, or by the selectmen as each town may determine. R. S. c. 23, § 70.

Towns derive all their power to raise money for taxation by the statute. A vote to raise money not authorized by the statute is illegal. 14 Me. 375; 23 Pick. 71.

Towns shall relieve persons having a settlement therein, when, on account of poverty, they need relief. They may raise money therefor as for other town charges; and may at their annual meeting choose not exceeding seven legal voters therein to be overseers of the poor. R. S. c. 27, § 11.

Any town or city which has a funded indebtedness may create a sinking fund for the payment and redemption of such indebtedness, may raise money by taxation for such purpose, and may purchase its own bonds as well as other securities, and place them in such sinking fund. R. S. c. 4, § 73.

Such sinking fund shall be used for no other purposes than those provided for in the preceding section, and any town officer who shall use or appropriate the moneys or securities which compose such sinking fund in any other manner or for any other purpose than as above provided, shall be punished by fine not exceeding two thousand dollars or by imprisonment for not more than two years. R. S. c. 4, § 74.

Upon the division of any town, the old corporation shall retain all the property, rights, and privileges, and remain subject to all its obligations and duties, unless the act for the same makes some new provision. 4 Mass. 384; 54 Me. 251; 45 Me. 133.

Cities and towns may issue and negotiate their notes, bonds or scrip for refunding or paying, in whole or part, any indebtedness thereof, which has or may hereafter become due. R. S. c. 4, § 75.

A town has power to settle a disputed claim against it provided it is done in good faith and in the exercise of sound discretion. 64 Me. 229.

A town is liable to be summoned as a trustee. 62 Me. 256.

A town may release a debt as well as contract one, by a vote of the majority of the voters at a regularly called meeting. 8 Me. 334.

A town has no right to give away money collected of the inhabitants by taxation. 14 Me. 375.

A claim against a town cannot be supported and enforced solely upon the general principles of equity and good conscience applied to individuals and corporations. A town is never estopped from invoking the defense of ultra vires. 91 Me. 371.

A town in its corporate capacity will not be bound, even by an express vote of a majority, to the performance of contracts or

other legal duties not coming within the scope of the objects and purpose for which it is incorporated. 77 Me. 400.

A town may expressly indemnify its officers against liabilities, and expenses of defending suits thereon, if incurred in the *bona fide* discharge of their official duties, as in case of an assessor in the assessment of taxes. 7 Pick. 18; or of a surveyor in repairing a highway. 18 Pick. 568; or of a school committee in defending an action for an alleged seizure and asportation of certain school registers. 3 Cush. 530; or of a school committee for expenses in successfully defending an action for libel alleged to be contained in an official report made by them in good faith. 11 Gray 340; or of a collector of taxes for costs and expenses in defending actions against him for acts done in the *bona fide* performance of his official duties. 12 N. H. 278.

A town may make a contract to allow a dramatic company the free use of its town hall for the period of six years, when not wanted for town business, in consideration that the company will make certain additions and alterations to the hall at its own expense. 66 Me. 585.

The vote of a town to exempt from taxation taxable property therein, is void; nor does the constitution permit the legislature to delegate such power to a town. 62 Me. 92; 62 Me. 451.

Towns can act only in their corporate capacity when empowered, and to exercise authority conferred upon a town by the legislature, the action of the town must, in point of time, succeed the date of authority. Before a town can take such action, a meeting called for the purpose is essential, followed by a vote expressing its will to do so. 69 Me. 53.

The legislature may ratify acts of a town. Ib.

Municipal corporations may contract for a supply of water, gas and electric light for municipal uses for a term of years upon such terms as may be mutually agreed, from time to time renew the same, and raise money therefor. All such contracts made prior to April twenty-eight, nineteen hundred and three, are confirmed and made valid. R. S. c. 4, § 76.

The past acts of towns, in offering, paying and contracting to pay, and in raising and providing means to pay expenses for recruiting for their several quotas, or bounties to or for volunteers, drafted men or substitutes of drafted men, or enrolled men, mustered into or enlisted for the military or naval service of the United States, are valid, provided, that such acts have been

done at meetings legally called and held in pursuance of warrants therefor, setting forth the purposes upon which such acts were based. All taxes assessed, contracts made, and notes and orders given by municipal officers in pursuance of votes passed at such meetings, are valid. R. S. c. 4, § 77; 51 Me. 610; 52 Me. 596; 53 Me. 450, 576; 56 Me. 202, 451; 59 Me. 316-17, 548; 60 Me. 122; 69 Me. 41, 55; 75 Me. 74.

Contracts made in pursuance of votes, passed at such meetings, by such municipal officers, or their agents, with any volunteer, drafted man or substitute, or with third persons, or associations, for providing means to pay bounties to volunteers, drafted men or substitutes, are valid. R. S. c. 4, § 78; 59 Me. 548; 60 Me. 122; 69 Me. 41, 56.

Contracts heretofore made by such municipal officers, or by third persons, for any town, without previous authority, to pay bounties to or for volunteers, drafted men or substitutes, in or enlisted for the military or naval service of the United States, may be ratified by any town at a legal meeting, called and notified as provided in section seventy-seven. R. S. c. 4, § 79; 55 Me. 14, 196; 69 Me. 55; 75 Me. 74.

Whenever the municipal officers of any city or town are notified in writing by the executors of any will, or by the trustees created by virtue of the terms thereof, that a devise or bequest in behalf of said city or town has been made upon conditions contained in said will, or by any individual, that he intends to make a conditional gift, in behalf of said city or town, the municipal officers of said city or town, shall, within sixty days after said notice to them, call a legal meeting of the inhabitants of said city or town qualified to vote upon city or town affairs; *provided, however*, that in cities the acceptance of such devise, bequest or conditional gift may be by vote of the city council, instead of by the inhabitants at a special election, if the municipal officers so direct. The municipal officers shall give public notice in their warrants, of the objects of said meeting of the inhabitants, and such other notice as they may deem proper. At such meeting, the said inhabitants, or the city council at a regular meeting, or at a special meeting called for that purpose, shall vote upon the acceptance of said devise or bequest or conditional gift, and if a majority of the legal voters, or of the members of the city council, present, then and there vote to accept said devise or bequest or conditional gift, in accordance with the terms contained in said will, and upon the conditions made

by the testator or by said individual, said municipal officers of said city or town, shall forthwith notify said executors or trustees, or individual, in writing, of said acceptance by said city or town aforesaid, or the non-acceptance thereof. R. S. c. 4, § 80.

Whenever the executors or trustees, under any will have fully discharged their duties respecting the payment, delivery, or otherwise, of any devise or bequest to said city or town, or any such individual has made such contemplated conditional gift to said city or town, and said city or town has accepted said devise or bequest or conditional gift, in accordance with the conditions thereto attached, as set forth in the preceding section, then said city or town shall perpetually comply with, and strictly maintain and keep all the conditions and terms upon which said devise or bequest or conditional gift was made; and any city or town so accepting said devise or bequest, or conditional gift and receiving the same, or enjoying the benefits therefrom, may raise money to carry into effect the requirements and terms upon which said devise or bequest or conditional gift was so accepted and received. The provisions of this and the preceding section shall apply only to devises and bequests and gifts, devised and bequeathed or given to cities and towns for educational, benevolent and charitable purposes and objects, or for the care, protection, repair and improvement of cemeteries owned by said cities or towns, or of cemetery lots owned by individuals. R. S. c. 4, § 81.

Any city or town may receive money by donation or legacy in trust for benevolent, religious or educational purposes, for the erection and maintenance of monuments, and for the benefit of public cemeteries and lots therein; provided, that the city or town lawfully consents. R. S. c. 4, § 82. 85 Me. 132, 511.

Interest shall be allowed if the fund is used by the city or town; and any city or town may use the principal of any trust fund for municipal purposes, if the town, or the city council of the city, votes to so use it, at a meeting called after due notice, at a rate of interest less than six per cent., if the party creating the trust so provides, or by an agreement with the beneficiary, approved by a decree in equity of the supreme judicial court, or such city or town may procure a decree from the supreme judicial court sitting in equity, establishing the rate of interest that such city or town shall pay for the use of such fund, and the supreme judicial court is hereby given jurisdiction over the

question of such use and rate of interest in such cases ; otherwise, it shall be placed at interest or income, the city or town being responsible for its security. R. S. c. 4, § 83.

The city or town, by its officers or agents, shall apply the fund or its income in accordance with the written directions of the donor or testator, made known at the time when the fund was accepted. R. S. c. 4, § 84.

If the city or town fails to apply the fund or its income at the times and for the purposes prescribed in said directions, it reverts to the donor, if living ; otherwise, to his heirs. R. S. c. 4, § 85.

Towns may raise by a two-thirds vote at their annual meeting, a sum not exceeding five hundred dollars, to be expended by the municipal officers thereof or by a commissioner elected by the towns for the propagation and protection of fish in public waters located wholly or partially within their respective limits. A report of the expenditures thereof shall be made at the next annual meeting by the officer or officers authorized to expend such appropriation. R. S. c. 4, § 86.

Any city or town may establish and maintain, within its limits, a permanent wood, coal and fuel yard, for the purpose of selling, at cost, wood, coal and fuel to its inhabitants. The term "at cost," as used herein, shall be construed as meaning without financial profit. R. S. c. 4, § 87.

The supreme court of Massachusetts holds that the legislature has not the power under the constitution, to authorize the cities and towns within the commonwealth to buy coal and wood for the purpose of sale to their inhabitants for fuel. 155 Mass. 598.

Cities and towns may choose by ballot, three park commissioners, to hold office one, two and three years, respectively, and after the first year choose annually a commissioner for three years in place of the one whose term expires ; they shall have the care and superintendence of the public parks and direct the expenditures of all moneys appropriated for the improvement of the same. R. S. c. 4, § 88.

Any city or town, containing more than one thousand inhabitants, upon petition in writing signed by at least thirty of its taxpaying citizens, directed to the municipal officers, describing the land to be taken as hereinafter provided, and the names of the owners thereof so far as they are known, at a meeting of

such town, or of the mayor, aldermen and council of such city, may direct such municipal officers to take suitable lands for public parks, squares or a public library building; and thereupon such officers may take such land for such purposes, but not without consent of the owner, if at the time of filing such petition, with such officers, or in the office of the clerk of such town or city, such land is occupied by a dwelling-house wherein the owner or his family reside. R. S. c. 4, § 89.

Whenever the municipal officers of such city or town are directed to take land as provided in the preceding section, they shall, within ten days, give written notice of their intention to take such land, describing the same, and the time and place of hearing, by posting the same in two public places in the town where the land lies, and in the vicinity thereof, and by publishing the same in a newspaper printed in such city or town, seven days before the day of such hearing, if any, otherwise, in a newspaper printed in the county where the land lies, three weeks successively, the last publication to be seven days before such hearing. The municipal officers shall meet at the time and place specified in the notice, view the land to be taken, hear all parties interested, and if they decide that the land is suitable for the purpose, they shall take the same and estimate the damages to be paid to each owner, so far as known, and make return of their doings in writing, signed by a majority of them, which return shall describe by metes and bounds the land so taken, and state the purpose for which it is taken, the names of the owners, so far as known, and the amount of damages awarded to each. The return shall be filed, and recorded in the clerk's office of such city or town, and a copy thereof, certified by such clerk, shall be recorded in the registry of deeds for said county. R. S. c. 4, § 90.

Any person aggrieved by the estimate of damages may have them determined by written complaint to the supreme judicial court in the manner provided respecting damages for the establishment of town ways. When such damages are finally determined, they shall be certified to the clerk of such city or town, and paid by the treasurer thereof. R. S. c. 4, § 91.

Cities and towns of more than thirteen hundred inhabitants shall provide fireproof safes or vaults of ample size for the reception and preservation of all completed books of record and registry belonging thereto; upon the completion of any such book of record and registry, the clerk of the city or town, shall

deposit the same in such safe or vault, and such books shall be kept in such safe or vault, except when required for use. R. S. c. 4, § 62.

The clerks of all cities and towns shall, in the month of December in each year, make a return to the clerks of the supreme judicial court in the several counties, showing the number and nature of such books of record and registry as are in their custody, and where they are kept and deposited; said return shall also show where the books of the municipal officers and treasurer are kept and deposited. R. S. c. 4, § 63.

Any city or town which neglects to perform the duties prescribed by section sixty-two shall forfeit for each month so neglecting, the sum of ten dollars, one-half to the complainant and one-half to the county in which such city or town is located. R. S. c. 4, § 64.

All Maine reports, statutes, digests, acts and resolves, and other publications, printed or purchased by the state and hereafter distributed according to law or custom, to the several towns and plantations within the state, shall be and remain the property of the state, and shall be held in trust by such towns or plantations for the sole use of the inhabitants thereof, and for no other purpose. R. S. c. 3, § 19.

All such books and publications as may hereafter be furnished by the state, to any state, county or town officer, shall be and remain the property of the state, and shall be held in trust by said officer, for the sole use of his said office; and at the expiration of his term of office, or on his removal therefrom by death, resignation or other cause, such officer, or if he be dead, his legal representatives, shall turn over to his successor in office all of said books and publications so furnished by the state and shall take a receipt therefor. R. S. c. 3, § 20.

All Maine reports, revised statutes, public laws and digests distributed by the state librarian to the several towns and public officers in said state, shall be plainly marked upon the cover and upon the title page with the following words: "The property of the State of Maine, not to be sold", and shall have a registered number conforming to the list to be made by the state librarian. Any town not retaining said volumes shall not make any requisition upon the state librarian for their replacement, and shall forfeit all claims to be supplied with any further state publications. R. S. c. 3, § 21.

CHAPTER X.

TOWN CLERK.

Annual town meetings shall be held in March, and the voters shall then choose, by major vote, a clerk. R. S. c. 4, § 12.

The town clerk shall be elected by ballot. R. S. c. 4, § 14.

The town clerk, before entering on the duties of his office, shall be sworn before the moderator or a justice of the peace, truly to record all votes passed in that and other town meetings during the ensuing year and until another clerk is chosen and sworn in his stead, and faithfully to discharge all the other duties of his office. R. S. c. 4, § 17; 58 Me. 518-52.

The clerk of any town may appoint a citizen thereof his deputy, who may, in the clerk's absence, perform all the duties of said office with the same effect as if done by the clerk; the appointment may be made in writing, as follows:

Form of Appointment of Deputy Clerk.

I hereby appoint ——— to perform the duties of town clerk as set forth in section eighteen of chapter four of the revised statutes, in the town of ——— during my absence from the clerk's office.

———, *Clerk of the Town of* ———.

R. S. c. 4, § 18; 70 Me. 564.

In case of the clerk's absence, death, resignation or removal from office, without having made such appointment, the municipal officers may appoint a citizen to fill said office, who shall perform all the duties of the clerk during his absence, or in case of his death, resignation or removal from office, until a clerk is elected. The appointment may be made in writing, as follows:

Form of Appointment of Clerk to Fill Vacancy.

I [*or we*] hereby appoint ——— to perform the duties of town clerk in the town of ——— during the clerk's absence from his office, or until a clerk is elected.

———, *Clerk* [*or municipal officers*] *of the Town of* ———.

R. S. c. 4, § 18.

Said deputy, or person appointed by the municipal officers, shall be sworn faithfully to perform the duties of his office before he enters thereon.

The clerk may appoint a woman, otherwise qualified by the constitution, who, in his absence, may so far act as deputy clerk as to receive and record chattel mortgages and other papers, and make certified copies of the record in the clerk's office. R. S. c. 4, § 18.

The town clerk, or any two selectmen, shall forthwith make a list of the names of all persons chosen into office, of whom an oath is required, and deliver it to a constable with a warrant to him directed; and he shall, within three days thereafter, summon each person therein named to appear before the town clerk, within seven days from the time of notice, to take such oath of office; and at the end of ten days after receiving his warrant the constable shall return it or forfeit six dollars to the town, and the town shall allow him a reasonable compensation for his services. R. S. c. 4, § 25.

Any town officer may be sworn by the town clerk, or by any person authorized by law, who shall give to the officer sworn, except when sworn in presence of such clerk, a certificate of the oath administered, which he shall return to such clerk to be filed. In either case, the clerk shall record the name of the officer and of his office, by whom sworn, and the time of taking the oath and returning the certificate. Any town clerk elected and sworn, may record his own election, the fact that he was sworn, and when and by whom. The record herein required shall be sufficient evidence that such officer was sworn. If any officer fails to return such certificate, or any clerk to record such oath within ten days he forfeits five dollars. R. S. c. 4, § 27; 79 Me. 472; 84 Me. 376.

The clerk of each town shall cause to be delivered at the office of the secretary of state, the returns of votes given in his town, for governor, senators, representatives to the legislature, representatives to Congress, electors of president and vice president of the United States, and for county officers, within thirty days next succeeding any meeting for their election or shall deposit them, postpaid, in some post office, directed to the secretary of state, within fourteen days after such meeting, to be transmitted by mail; and shall also forward to such office, as soon as practicable, a statement attested by him of the number of votes for said several officers, given at such election in

his town, which shall be opened and filed by the secretary, and kept for public examination. R. S. c. 6, § 54.

Residents of the state intending to be joined in marriage, shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted; and if one only of the parties resides in the state, he shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such party resides, at least five days before such certificate is granted; and the book in which such record is made shall be labelled on the outside of its cover, "Record of intentions of marriage," and be kept open to public inspection in the office of the clerk, and if there is no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town. Persons who are non-residents of the state intending to be married in this state, shall have their intentions of marriage recorded in the office of the clerk of the town in which they propose to have the marriage solemnized, and the clerk may, upon request, issue his certificate on the same day in which he records the intentions of marriage of non-residents, but no person shall marry any couple, before he has received the certificate issued by the town or city clerk. P. L. 1909 c. 75.

When marriage is proved to have been solemnized by a settled ordained minister of the gospel, the legal presumption is that it was done in accordance with law. 36 Me. 448; 63 Me. 497.

Marriage is a social relation. It is a civil contract, in one point of view, and only those who can legally enter into a civil contract can legally marry. 51 Me. 480. The law on this subject is regulated by the statutes of the place where the parties had their domicile. 97 Me. 130.

For cases in which marriages are prohibited and void under the statute, see R. S. c. 61, §§ 1, 2 and 3. And for penalty for knowingly and wilfully joining persons in marriage contrary to statutes, see R. S. c. 61, §§ 13 and 14, as amended by P. L. 1909 c. 161.

The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; and it shall be delivered to the minister or magistrate before he begins to solemnize the marriage; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents

or guardians first presented, if they have any living in this state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk; and for an intentional violation of the foregoing prohibitions, or for falsely stating the residence of either party named in such certificate, such clerk forfeits twenty dollars. R. S. c. 61, § 5.

All certificates of record of intentions of marriage, issued by the clerks of cities, towns or plantations shall have conspicuously printed thereon the following words: "The laws of Maine provide for a fine not exceeding one thousand dollars or imprisonment not exceeding five years to be the punishment for any clergyman, or other person, who shall solemnize a marriage within this state unless commissioned or authorized by the governor of Maine to solemnize marriages." P. L. 1907 c. 65, § 1.

Whoever contracts a marriage, or makes false representations to procure such certificate or the solemnization of marriage contrary to this chapter, forfeits one hundred dollars. R. S. c. 61, § 6.

A town clerk who makes out and delivers to any person a false certificate of the entry of the intention of marriage, knowing it to be false in any particular, shall be fined one hundred dollars or imprisoned six months. *Ib.* § 17.

When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall, on the blank prepared by the state registrar for that purpose, fill out and file a certificate of their marriage with the clerk of the town in which each of them lived, within seven days after their return. The clerk shall then record such marriage. Any person who fails to make the report of his marriage to the town clerk as is herein provided shall forfeit twenty dollars, half to the prosecutor, and half to the town where the forfeiture is incurred. P. L. 1909 c. 75, § 2.

Any person believing that parties are about to contract marriage, when either of them cannot lawfully do so, may file a caution and the reasons therefor, in the office of the clerk where notice of their intention should be filed. Then, if either party applies to enter such notice, the clerk shall withhold the certificate until a decision is made by two justices of the peace approving the marriage, after due notice to and hearing all concerned: provided, that the person filing the caution shall,

within seven days thereafter, procure the decision of such justices, unless they certify that further time is necessary for the purpose, in which case a certificate shall be withheld until the expiration of the certified time. He shall, finally, deliver or withhold the certificate in accordance with the final decision of said justices. If the decision is against the sufficiency, the justices shall enter judgment against the applicant for costs, and issue execution therefor. R. S. c. 61, § 8.

Marriages solemnized among Quakers or Friends, in the form heretofore practiced in their meeting, are valid, and not affected by the foregoing provisions; and the clerk or the keeper of the records of the meeting in which they are solemnized, shall make return thereof as provided in section twenty of chapter sixty-one of revised statutes. *Ib.* § 10. See also *Ib.* § 37.

Every justice of the peace or notary public residing in this state may solemnize marriages therein. Every ordained minister of the gospel, clergyman engaged in the service of the religious body to which he belongs, or person licensed to preach by an association of ministers, religious seminary or ecclesiastical body, whether a resident or non-resident of this state, and of either sex, may solemnize marriages therein after being licensed for that purpose, upon application duly filed with the secretary of state, as herein provided. Such application shall be made upon blanks furnished by the secretary of state which shall be signed by the applicant and set forth the necessary facts in the premises, which facts shall be certified to by the clerk, treasurer, or any of the municipal officers of the town wherein the applicant resides or wherein the ceremony is to be performed. P. L. 1909 c. 161, amending R. S. c. 61, § 11.

A copy of a record of marriage duly made and kept, attested or sworn to by a justice of the peace, commissioned minister, or town clerk, shall be received in all courts as evidence of the fact of marriage. R. S. c. 61, § 15.

No marriage, solemnized before any known inhabitant of the state professing to be a justice of the peace, or an ordained or licensed minister of the gospel duly appointed and commissioned, is void, nor is its validity affected by any want of jurisdiction or authority in the justice or minister, or by any omission or informality in entering the intention of marriage, if the marriage is in other respects lawful, and consummated with a full belief, on the part of either of the persons married, that they are lawfully married. *Ib.* § 16.

The clerk of every town shall keep a chronological record of all births, marriages and deaths reported to him, or known to him, and shall between the tenth and the fifteenth of every month, transmit to the state registrar a copy of the record of all births, marriages, and deaths which have occurred within the month next preceding, together with the names, residences, and official stations of all persons who have neglected to make returns to him in relation to the subject matters of such records, which the law required them to make, all to be made upon blanks, to be prepared and furnished by the state registrar; and if no births, marriages, or deaths have occurred in the aforementioned period of time or month, for which returns are to be made, the town clerk shall send the state registrar a statement to that effect. Whenever a birth, marriage, or death required by law to be returned to such clerk, is reported to him, or he learns of it, too late for inclusion in his returns as provided hereunder to the state registrar, he shall, after it is reported to him, or after he has knowledge of it, make due returns thereof to the state registrar forthwith. R. S. c. 61, § 32, as amended by P. L. 1907 c. 56.

The registrar of vital statistics shall require all copies which are transmitted under the provisions of section thirty-two of chapter sixty-one to be typewritten or written with black durable ink in a fair or legible hand, and a city or town clerk who neglects or refuses to make or cause to be made typewritten or fair and legible copies as required shall forfeit not less than twenty nor more than one hundred dollars to the use of the state. P. L. 1909 c. 75.

Every person authorized to unite persons in marriage shall make a record of every marriage solemnized before him, in conformity with the requisitions prescribed for blank records of marriages in section eighteen and shall within six days thereafter, deliver or forward to the clerk of each town in which the marriage intention was recorded, and to the clerk of the town in which the marriage was solemnized, a copy of such record of marriage. R. S. c. 61, § 20.

The clerk of each city or town shall enforce, so far as comes within his power, sections ten, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-eight and thirty-one of chapter sixty-one of the revised statutes and when he knows of any birth, marriage or death, which is not reported to his office in accordance with the provisions of said chapter, he shall collect so far as he is able to do so, the facts called for in the blank certificates of birth,

of marriage, or of death, as furnished by the state registrar, and shall record them as is herein prescribed; for each birth or death duly reported to the town clerk, physicians shall receive twenty-five cents from the town in which the birth or death has occurred. R. S. c. 61, § 38, as amended by P. L. 1909 c. 75.

For solemnizing a marriage and certifying the same, every ordained minister or justice of the peace, and every woman appointed for the purpose, shall be entitled to one dollar and twenty-five cents. R. S. c. 117, § 19.

The assessors shall, when taking the annual inventory, collect and return to the town clerk, before the first day of June, the births which have occurred within their respective jurisdictions during the year ending December thirty-first next preceding, together with the names of such children. R. S. c. 61, § 31.

The clerk shall make a record of all licenses granted innholders and victualers. R. S. c. 29, § 4. See Private and Special Laws 1905, c. 167, pertaining to innholders in City of Portland.

City clerks of the several cities, shall promptly transmit to the librarian of the state library copies of all printed reports of cities including all exhibits of city expenditures. R. S. c. 3, § 15.

Clerks of towns shall preserve the check lists used at the September elections for one year without alteration, and shall furnish to any person a certified copy thereof within twenty days after demand and payment or tender of the legal charges therefor, under the penalty provided in section seventy-eight of chapter six of the revised statutes. R. S. c. 6, § 46; 92 Me. 158.

One part of the indenture binding apprentices, when made by consent of the municipal officers, shall be deposited with the town clerk. R. S. c. 64, § 4.

When a town treasurer is elected and qualified, the clerk shall communicate his name to the treasurer of state and to the state auditor; and no city, town or plantation shall receive any money from the treasurer of state until the name of its treasurer has been so communicated. R. S. c. 4, § 43, as amended by P. L. 1909 c. 173.

When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within five days thereafter, file in the office of the clerk of the town in which the attachment is made, an attested copy of so much of his return on the writ as relates to

the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ, and the court to which it is returnable, and such attachment is as effectual and valid, as if the property had remained in his possession and custody. The clerk shall receive the copy, noting thereon the time, enter it in a suitable book, and keep it on file for the inspection of those interested therein. R. S. c. 83, § 27; 81 Me. 298, 593; 84 Me. 276; 89 Me. 233, 299; 91 Me. 70; 93 Me. 492.

No mortgage of personal property is valid against any other person than the parties thereto, unless possession of such mortgage is delivered to, and retained by the mortgagee, or the mortgage is recorded by the clerk of the city, town, or plantation in which the mortgagor resides when the mortgage is given. When all the mortgagors reside without the state, the mortgage shall be recorded in said city, town, or plantation where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the cities, towns, or plantations in which such mortgagors reside when the mortgage is given. A mortgage made by a corporation shall be recorded in the town where it has its established place of business. R. S. c. 93, § 1.

The clerk shall record all such mortgages delivered to him, in a book kept for that purpose, noting therein, and on the mortgage, the time when it was received; and it shall be considered as recorded when received. R. S. c. 93, § 2; 34 Me. 376; 73 Me. 250; 81 Me. 298.

No agreement that personal property bargained and delivered to another shall remain the property of the seller till paid for is valid unless the same is in writing and signed by the person to be bound thereby. And when so made and signed, whether said agreement is or is called a note, lease, conditional sale, purchase or installments, or by any other name, and in whatever form it may be, it shall not be valid, except as between the original parties thereto, unless it is recorded in the office of the clerk of the town in which the purchaser resides at the time of the purchase. The fee for recording the same shall be the same as that for recording mortgages of personal property. All said agreements, whether recorded or not, shall be subject to redemption; but the title may be foreclosed in the same manner as is provided for mortgages of personal property. R. S. c. 113, § 5.

After a final division of their common property, they shall cause their records to be deposited in the office of the clerk of the town in which some part of such lands lies; and he may record votes and certify copies of such records, as the proprietors' clerk might have done; and the last clerk chosen shall continue in office until the records are so deposited. R. S. c. 58, § 12.

Whenever the municipal officers or engineers, upon inspection, find that proper safeguards and precautions for escape in case of fire, or of alarm, have been provided, they shall give to the occupant of such building a certificate, under their hands, of such fact; which shall be valid for one year only from its date. Such officers shall return to the clerk's office of their town, monthly, a list of such certificates by them issued, which the clerk shall record in a suitable book. R. S. c. 28, § 42.

When fence viewers assign the portions of fences to be built as provided in section five of chapter twenty-six of the revised statutes, the assignment shall be recorded in the town clerk's office. R. S. c. 26, § 5.

After the list of jurors is approved by the town the board shall write their names upon tickets and place them in the jury box, to be kept by the town clerk; and the persons whose names are in the box are liable to be drawn and to serve on any jury, at any court for which they are drawn, once in every three years and not oftener, except as herein provided. R. S. c. 108, § 4.

The town clerk, or, in his absence, one of the municipal officers, shall carry the jury box into the meeting, and it shall there be unlocked, and the tickets mixed by a majority of said officers present; one of them shall draw out as many tickets as there are jurors required; and the persons whose names are drawn shall be returned as jurors, unless they have served on the jury within three years, or from sickness, or absence beyond sea, or without the limits, or in distant parts of the state, they are considered by the town unable to attend. R. S. c. 108, § 11. This section also applies to plantations. P. L. 1905 c. 82.

If the municipal officers or town clerk neglect to perform their duties herein required, so that the jurors called for from their town are not returned, they shall be fined not less than ten, nor more than fifty dollars each. R. S. c. 108, § 16.

Any town clerk or municipal officer, who commits a fraud on the box previous to the draft, in drawing a juror or in return-

ing a name, which had been fairly drawn, into the box, and drawing another in its stead, or in any other mode, shall be fined not exceeding two hundred dollars, half to the state and half to the prosecutor. R. S. c. 108, § 20.

No city, county or state officer, whose duty it is to record conveyances of any kind, assignments, certificates or other documents or papers whatsoever, shall draft or aid in drafting any conveyance, assignment, certificate or other document or paper which he is by law required to record, in full or in part; under a penalty of not exceeding one hundred dollars, to be recovered by any complainant by action of debt for his benefit or by indictment for the benefit of the county. R. S. c. 11, § 14.

Cities and towns of more than thirteen hundred inhabitants shall provide fireproof safes or vaults of ample size for the reception and preservation of all completed books of record and registry belonging thereto; upon the completion of any such book of record and registry, the clerk of the city or town shall deposit the same in such safe or vault, and such books shall be kept in such safe or vault, except when required for use. R. S. c. 4, § 62.

The clerks of all cities and towns shall, in the month of December in each year, make a return to the clerks of the supreme judicial court in the several counties, showing the number and nature of such books of record and registry as are in their custody, and where they are kept and deposited; said return shall also show where the books of the municipal officers and treasurer are kept and deposited. R. S. c. 4, § 63.

Any city or town which neglects to perform the duties prescribed by the preceding section, shall forfeit for each month so neglecting, the sum of ten dollars, one-half to the complainant and one-half to the county in which such city or town is located. R. S. c. 4, § 64.

Clerks of cities and towns shall receive for recording mortgages of personal property and notices of foreclosure of the same, and descriptions of family burying grounds, fifty cents.

For recording assignments of wages, certificates of discharge of attachments and notices of finding lost money, goods or stray beasts, twenty-five cents.

For receiving of an officer a copy of return of attachment of personal property, noting thereon the time when it is received, entering it in a suitable book and keeping it on file, ten cents.

For filing copy of petition for release of attachment and certificate, and making necessary certificate thereof, twenty cents.

For entering and recording intentions of marriage, giving certificate of same, one dollar, to be paid on issuing the certificate of intention.

For recording sheep marks, ten cents.

For a certificate of a birth, marriage or death, ten cents; for affixing an official seal, when necessary, twenty-five cents more.

The clerk of each city or town shall be paid by such city or town for receiving, recording and returning the facts required by chapter sixty-one of the revised statutes, to be recorded the sum of fifteen cents for each birth, marriage or death.

For every birth, marriage or death collected and recorded under section thirty-eight of chapter sixty-one of the revised statutes, the clerk shall receive from the town twenty-five cents.

For each oath recorded by him the clerk shall receive from the town five cents.

In all cases where books with printed forms are not furnished therefor, the clerk shall receive for receiving and recording any instrument by law entitled to be recorded, in addition to the fees now provided by law, the sum of fifteen cents for each one hundred words or fraction thereof in excess of five hundred words; *provided, however*, if the instrument to be recorded does not exceed in length two hundred and fifty words, the fee for recording the same shall be twenty-five cents. R. S. c. 117, § 20.

When omissions or errors exist in the records or tax lists of a town or school district, or in returns of warrants for meetings thereof, they shall be amended, on oath, according to the fact, while in or after he ceases to be in office, by the officer whose duty it was to make them correctly. If the original warrant is lost or destroyed, the return, or an amendment of it, may be made upon a copy thereof. R. S. c. 4, § 10.

A clerk may amend his records while in office or after re-election (*Bangor v. Orneville*, 90 Me. 217), but not when no longer in office, if he has no statutory authority. 102 Me. 414.

It is irregular for the city clerk to cast the vote of the convention for election of city officers. 90 Me. 71.

For duties of city clerk in matters pertaining to dogs and protection of sheep, see title Dogs, post.

For duties of city clerk in matters pertaining to elections, see title Elections, post.

For duties of city clerk in matters pertaining to the registration of vital statistics, see Vital Statistics, post.

As to lost goods and beasts, see title Lost Goods and Stray Beasts, post.

In addition to the foregoing provisions providing for recording attachments of bulky and other articles in the office of the city or town clerk, the following is a summary of special statutory provisions for recording certain lien claims in said office. It is not intended to cover all cases in which liens exist, and for which general provision is made for making attachments; but only such cases, as above indicated, where a special provision is prescribed for recording in the office of the clerk of the municipality.

For labor in manufacturing or repairing iron work or wood-work of wagons, carts, sleighs and other vehicles, and materials used. In such case a statement of the lien sworn to by the claimant, or someone in his behalf shall be filed in the office of the clerk in a book kept for that purpose within thirty days from the time such labor is performed. Fees: same as for recording mortgages. P. L. 1905 c. 57.

For labor performed or materials furnished in erecting, altering, moving or repairing a house, building or appurtenances, or in constructing, altering or repairing a wharf, or pier, or any building thereon, by virtue of a contract with or by consent of the owner. In such case a statement of the lien claimed (which covers the land on which the structure stands,) shall be filed in the clerk's office within sixty days after the labor ceases or materials are furnished, with a description of the property intended to be covered by the lien, sufficiently accurate to identify it. Such lien shall be sworn to and recorded in the book kept for that purpose by the clerk. Fees: same as for recording mortgages. R. S. c. 93, §§ 29, 30, 31, as amended by P. L. 1905 c. 110.

For labor or materials furnished for building a vessel. If the vessel is at the time on the stocks, such lien is perfected (so far as the duties of the town or city clerk are concerned) by filing in the office of the clerk, within forty-eight hours after the attachment, a copy of so much of the officer's return on the writ as relates to the attachment with the name of the person liable for the debt, the description of the vessel as given in the writ,

the date of the writ, the amount claimed and court to which it is returnable. For further service of the writ see section eleven of chapter ninety-three of the revised statutes. If at the time of attachment the vessel is launched it shall be attached as other personal property. R. S. c. 93, §§ 8, 9, 10, 11; 58 Me. 99.

For monumental work done or furnished under an express contract fixing the price. In such cases the attachment in the suit to enforce the lien is to be recorded in the clerk's office in the town where the property is situated within two years after completion, delivery or erection of the work; or the lien may be enforced by petition, which, before service thereof, and within said two years, shall be recorded by the clerk of the town in which such property is situated and a certificate of such record endorsed thereon. P. L. 1905 c. 43.

Goods sold under innkeeper's and boarding-house keeper's lien shall be recorded in the office of the town clerk where the sale takes place, in a suitable book open to public inspection, in which the articles sold shall be correctly described, with charges and expenses of advertising and selling, and the prices at which they were sold. R. S. c. 93, § 65.

Notice of intended sale of stocks, bonds or other property pledged for payment of money or the performance of any other thing shall be recorded in the office of the clerk of the city or town where the pledgee resides, together with an affidavit of service. R. S. c. 93, § 76.

For further powers and duties of the city clerk in respect to particular papers and records the following references are made to the revised statutes (nineteen hundred and three) and to acts of the legislature, although several of the citations below enumerated will be found in other parts of this volume under appropriate headings.

To be filed with the city clerk:—

<i>Apprenticeship</i> , indentures of,	R. S. c. 64, § 4
<i>Assignment of Wages</i> ,	P. L. 1907 c. 103
<i>Attachment</i> of bulky property,	R. S. c. 83, § 27
<i>Bottles</i> , etc., description of marks on,	R. S. c. 40, § 37
<i>Burying Grounds</i> , description of,	R. S. c. 20, § 5
Family grounds of,	R. S. c. 20, § 6
<i>Cattle</i> , regulations as to passage of,	R. S. c. 19, § 18
<i>Chattel Mortgages</i> ,	R. S. c. 93, § 2
Foreclosure, also notice of,	R. S. c. 93, § 5
<i>Coasting</i> , designation of streets for,	R. S. c. 4, § 70

<i>Common Sewer</i> , permit to enter,	R. S. c. 21, § 7
Awards of arbitrators,	R. S. c. 21, § 20
<i>Conditional Sales</i> , contracts of,	R. S. c. 113, § 5
<i>Fences</i> , assignments of partition,	R. S. c. 26, § 5
<i>Fire</i> , certificates of safety from,	R. S. c. 28, § 42
<i>Initiative Referendum</i> , signatures attested by city clerk, Const. Amend.,	P. L. 1909, p. 1458
<i>Innholders</i> , sales of goods by,	R. S. c. 93, § 65
Licensing of,	P. and S. L. 1905 c. 167
<i>Inspectors</i> of flour, to give certificate to,	R. S. c. 39, § 2
<i>Janitors</i> , steam plants in public buildings, certificate of,	P. L. 1907 c. 82
<i>Library Buildings</i> , land taken for public,	R. S. c. 4, § 10
<i>Lost Money or Goods</i> , notice of finding,	R. S. c. 100, § 10
<i>Milk Cans</i> , registration of,	P. L. 1907, c. 129
<i>Oil Cans</i> , description of marks,	R. S. c. 40, § 13
Defacing with fraudulent intent,	R. S. c. 40, § 14
<i>Parks and Squares</i> , land taken for public,	R. S. c. 4, § 90
<i>Perambulation</i> of town lines,	R. S. c. 4, § 108
<i>Persons</i> moving into and from town, list of,	R. S. c. 4, § 42
<i>Petition for Referendum</i> , attested by city clerk, Const. Amend.,	P. L. 1909, p. 1458
<i>Pews</i> in churches, deeds of,	R. S. c. 75, § 31
<i>Poles and Wires</i> , location of,	P. L. 1909 c. 236
<i>Polling Districts</i> , limits of,	R. S. c. 6, § 20
<i>Public Landings</i> , procedure in laying out,	P. L. 1907 c. 87
<i>Sewer Assessments</i> , to make list of,	R. S. c. 21, § 8
<i>Street R. R.</i> , location of,	P. L. 1907, c. 132
<i>Trees on Land Abutting Highways</i> , action for preservation of,	P. L. 1907 c. 27
<i>Votes</i> , for governor of,	Const. art. 5, § 3
for representatives,	Const. art. 4, § 5
for senators,	Const. art. 4, part 2, § 3
<i>Weirs</i> , as to construction in tide water,	c. 4, § 98
<i>Wharves</i> , as to erection in tide water,	c. 4, § 98

CHAPTER XI.

ELECTIONS.

RIGHTS AND QUALIFICATIONS OF VOTERS.

Every male citizen of the United States, of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this state for the term of three months next preceding any election, shall be an elector for governor, senators, and representatives, in the town or plantation where his residence is so established, and the elections shall be by written ballot. But persons in the military, naval, or marine service of the United States or this state shall not be considered as having obtained such established residence, by being stationed in any garrison, barrack, or military place in any town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the state in the military service of the United States or of this state. Const. art. 2, § 1, as amended.

A person if otherwise qualified is to be considered as entitled to vote for state officers, unless he shall have been a pauper within three months next preceding the election. A person is to be considered a pauper while he receives supplies, as such, from the town where he is resident or found, whether furnished directly by the overseers of the poor, or indirectly by the person to whom he has been disposed of and consigned by such overseers for support. 7 Me. 499.

A student may obtain a voting residence, if other conditions exist sufficient to create it. Bodily presence in a place coupled with an intention to make such place a home will establish a domicile or residence. But the intention to remain only so long as a student, or only because a student, is not sufficient. The intention must be, not to make the place a home temporarily, not a mere student's home, a home while a student, but an

actual, real, permanent home there; such a real and permanent home there as he might have elsewhere. The intention must not be conditioned upon or limited to the duration of the academical course. To constitute a permanent residence, the intention must be to remain for a definite period, regardless of the length of time the student expects to remain at the college. He gets no residence because a student, but being a student does not prevent his getting a residence otherwise. 76 Me. 165.

Persons born upon the disputed territory within the present limits of this state have the same elective franchises as persons born upon territory within the state over which the British government made no claim. 68 Me. 593.

No person shall have the right to vote or be eligible to office under the constitution of this state, who shall not be able to read the constitution in the English language and write his name; *provided, however*, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age or upwards at the time this amendment shall take effect. Const. Amend. art. 29. Took effect first Wednesday of January, eighteen hundred and ninety-three. 85 Me. 511.

Every male citizen who had the right to vote on the fourth day of January, eighteen hundred and ninety-three, together with those who were sixty years of age and upwards on said day, and every other male citizen, except paupers, persons under guardianship and Indians not taxed, who, not being prevented by physical disability from so doing, is able to read the constitution of the state in the English language, in such manner as to show that he is neither prompted nor reciting from memory, and to write his name, and who is twenty-one years of age or upwards, and shall have his residence established in this state for the term of three months next preceding any national, state, city or town election, shall have the right to vote at every such election in the city, town or plantation where his residence is so established, *provided, however*, that his name has been properly entered upon the voting list of such city, town or plantation. R. S. c. 5, § 2.

Any applicant for registration as a voter, claiming exemption from the educational test recited in preceding section, except those exempted by the provisions of said section, shall declare under oath, that he was a legal voter in this state on the fourth

day of January, eighteen hundred and ninety-three, and, if required so to do, shall furnish such other reasonable evidence of the truthfulness of his statement as may be satisfactory to the officers whose duty it is to prepare voting lists. R. S. c. 5, § 3; P. L. 1893 c. 173.

Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at, going to, and returning therefrom. Const. art. 2, § 2. But the privilege does not extend to an elector preparing to go, if he have not actually proceeded on the way. 8 Me. 187.

This privilege may be waived. 16 Me. 132; 76 Me. 140.

No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger. Const. art 2, § 3.

The election of governor, senators, and representatives shall be on the second Monday of September biennially. Const. art. 2, § 4.

No court shall be held on any day designated for the choice of presidential electors, or on the day of the state election. R. S. c. 79, § 52.

No soldier or sailor who served by enlistment in the army or navy of the United States, in the war of eighteen hundred and sixty-one, or in the war with Spain, and who has received an honorable discharge from all enlistments in said service, whether in his own proper name or an assumed name, and who has or may become dependent upon any town, shall be considered a pauper or be subject to disfranchisement for that cause; but the time during which said soldier or sailor is so dependent, shall not be included in the period of residence necessary to change his settlement; and overseers of the poor shall not have authority to remove to, or support in, the poorhouse, any such dependent soldier or sailor or his family; the word "family" here used shall be held to include the soldier or sailor, his wife, his unmarried minor children living with him and dependent upon him for support, and such other unmarried children of his dependent upon him for support, who by reason of mental incapacity or physical disability are unable to provide for themselves; but the town of his settlement shall support them at his own home in the town of his settlement or residence, or in such suitable place other than the poorhouse, as the overseers of the town of his settlement may deem right and proper. In case of violation of

this section the overseers of the poor shall be subject to a fine of twenty-five dollars. And for every day they allow them to remain in such poorhouse, after reasonable notice, they shall be subject to a further fine of five dollars a day, to be recovered by complaint or indictment. This section shall not be so construed as to deprive overseers of the poor of any right to remove and support such dependent soldier or sailor and his family in the town of his settlement, as herein provided. R. S. c. 27, § 9.

A student may gain right to vote in town where the seminary of learning, he is attending, is situated. Each case depends largely upon its peculiar facts as to whether or not the student has a voting residence or is merely a student. 76 Me. 161.

Any person, in order to be considered a pauper, must be assisted by the town in which he claims a right to vote. If he have received aid from the town within three months of the day of election, he is not a legal voter; but if he received aid from the town more than three months before but not within three months of the election he is a voter, whether he owes the town for it or not. Opinions of the Justices, 7 Me. 499.

That place is considered the home of a person in which his habitation is fixed, without any present intention of removing therefrom. Wife may have, separate from husband. 64 Me. 78.

Wife cannot change residence of husband against his will. 67 Me. 557.

A person, having acquired a home in a place does not lose it by a temporary absence with the intention of returning—as to do a job of work, or absence at sea, or absence at college. 49 Me. 367. If a person supports his family in one town, and resides to transact business in another town, he can vote for state officers only in the town where his family has resided three months next preceding the election. 7 Me. 497.

A voter is not disfranchised because another person falsely personates him and votes. The rightful voter, after proving that he is the person whose name is on the list, that he has not voted and that he has a legal right to vote, may cast his ballot. 76 Me. 218.

Where a voter removed to another town in the state within three months before election he cannot vote in either town. McCrary on Elections, §§ 61 and 65.

CHAPTER XII.

ELECTIONS.

LIST OF VOTERS.

In every town where the selectmen are not the assessors, the assessors, on or before the first day of August in each year in which an election of governor, senators, and representatives is held, shall prepare a list of the persons whom they judge to be constitutionally qualified to vote therein at such election and deliver it to the selectmen. R. S. c. 5, § 34.

The selectmen of every town, on or before the eleventh day of August, in every such year, shall prepare a corrected list of persons so qualified. R. S. c. 5, § 35.

In every town having, by the census of the United States then last taken, more than three thousand inhabitants, the selectmen shall be in open session to receive evidence of the qualifications of persons claiming the right to vote at any such election, and for the correction of said list, for a reasonable time, on not more than two days, between the eleventh and eighteenth days of August in every such year, giving previous notice of the time and place of each session, as their town meetings are notified. R. S. c. 5, § 36.

On or before the twentieth day of August in every such year, the selectmen shall deposit in the office of the town clerk an alphabetical list of voters thus prepared and revised, and post a similar list in one or more public places in the town. R. S. c. 5, § 37.

After such lists are thus prepared, deposited with the clerk, and posted, the selectmen shall not add thereto nor strike therefrom the name of any person, except in open session on one of the days prescribed by law for receiving evidence of the qualification of voters; nor shall they strike from said list the name of any person residing in town, without notice first given to him that his right to vote is questioned, and an opportunity for a hearing on one of such days. But at any regular session for

receiving such evidence, the selectmen shall place on the list of voters the name of every person known by or proved to them to be so qualified, whether he applies therefor or not. R. S. c. 5, § 38.

When a person of foreign birth exhibits to the selectmen of his town, papers of naturalization, issued to him in due form by a court having jurisdiction, they shall, if satisfied of their genuineness, and that such person is entitled to vote, approve such papers by a written indorsement thereon, with the date thereof, signed by one of them; register in a book kept for that purpose the name of the person, the date of the papers, the date of approval, and the name of the court by which they were issued; cause the name of such person to be entered on the list of voters; and continue his name on the successive lists so long as he continues to reside there, and is in other respects qualified to vote. If they are of opinion that such papers are not genuine, or were not issued to the person presenting them, or that he is not for other cause a legal voter, they shall not approve them, or perform the other acts required; but he shall not by their refusal to approve his papers, or to enter his name, be deprived of his right to vote, upon satisfactory proof. R. S. c. 5, § 39.

In all towns, cities not included, having five hundred or more registered voters and in all cities having less than four thousand inhabitants, the municipal officers thereof shall receive applications of persons claiming a right to vote, on the three secular days next preceding the day of election, and no application shall be received after the hour of five of the clock in the afternoon on the secular day next preceding the day of the election; and no name shall be added to the list of voters on the day of election, by certificate or otherwise, except such as were upon the list used at the last preceding election, and have been inadvertently omitted by the selectmen; and on that day no change shall be made in names except to correct clerical errors therein. R. S. c. 5, § 40.

In every town containing less than five hundred voters, the municipal officers shall be in session on the day of any such election to receive and decide on such applications, at some convenient place, for so long a time immediately preceding the opening of the polls as they think necessary, and shall hear and determine any such application at any time before the polls are closed. R. S. c. 5, § 41.

The municipal officers shall order notice of the time and place of all their sessions, required or authorized in the two preceding

sections, to be given in the warrant for calling the meetings for such elections. R. S. c. 5, § 42.

Form of the List of Voters, Which Must be Arranged Alphabetically.

An alphabetical list of the voters in the town of —, in the county of —, as made out by the selectmen, the — day of —, A. D. 19—.

A. B., C. D., E. F., G. H., I. O.

The selectmen shall make out a correct alphabetical list of the inhabitants in their towns qualified to vote in the choice of town officers, and deposit it in the office of the town clerk, and post a copy thereof in one or more public places in such town, on or before the twentieth day of February, annually. R. S. c. 5, § 43.

They shall be in session at some convenient time and place to be by them notified in the warrant for calling the meeting in such town, on the secular day next preceding the annual election in March, or on the morning of the day of election, to hear and decide upon the applications of persons claiming to have their names entered upon said list; and such session, when held on a secular day preceding the election, shall continue at least three hours, and when held on the day of election, shall continue until the election of town officers required by law to be elected by ballot, has been completed. R. S. c. 5, § 44.

The town clerk shall have the list of voters provided for by the two preceding sections at every town meeting held for the choice of town officers required by law to be chosen by ballot, and it shall be kept and used as a check list at the polls by said clerk or moderator at such meeting, in the manner prescribed for selectmen or assessors by section forty-one of chapter six, if demanded by one-third of the voters present. R. S. c. 5, § 45.

If the town clerk or moderator presiding at such meeting willfully neglects or refuses to comply with the preceding section, he forfeits not less than fifty, nor more than one hundred dollars, to be recovered in an action of debt in the name and for the use of the town, to be prosecuted by the treasurer at the request of any voter therein. R. S. c. 5, § 46.

CHAPTER XIII.

ELECTIONS.

NOTIFYING MEETINGS.

The selectmen of every town, by their warrant, shall cause the inhabitants thereof, qualified according to the constitution, to be notified and warned seven days at least before the second Monday of September biennially, to meet at some suitable place designated in said warrant, to give in their votes for governor, senators and representatives, as the constitution requires; and such meeting shall be warned like other town meetings. R. S. c. 6, § 34.

Form of a Warrant.

To ———, constable of the town of ———:

You are hereby required, in the name of the State of Maine, to notify and warn the inhabitants of said town of ———, qualified as the constitution requires, to assemble at ———, on the ——— day of ———, 19—, at ——— o'clock in the ——— noon, to give in their votes for governor, senators, and representatives [*or representative*] to represent them in the legislature of this state.

The polls will be opened at ——— o'clock in the forenoon and be closed at ——— o'clock in the afternoon.

The selectmen will be in session at ———, on the ——— day of ———, at ——— o'clock in the ——— noon, for the purpose of correcting the list of voters.

Dated at ———, the ——— day of ———, A. D. 19—.

A. B., }
C. D., } *Selectmen of ———.*
E. F., }

In warning as above for the choice of register of deeds, county treasurer, or other county officers, the revised statutes prescribe that instead of the words, "as the constitution requires," should be substituted in the third and fourth lines of the warrant the words "to vote for representatives."

Form of a Return on the Back of the Warrant by the Constable.

———, ———, ———, A. D. 19—. Pursuant to the within warrant, to me directed, I have notified and warned the inhabitants of said town of ———,

qualified as therein expressed, to assemble at the time and place, and for the purpose therein mentioned, by posting an attested copy of such warrant at —, being a public and conspicuous place in said town, on the — day of —, being seven days before said meeting.

A. B., *Constable of* —.

If the aldermen of cities, selectmen of towns, or assessors of plantations neglect to issue their warrant as required by law for a meeting for the choice of state or county officers, representatives to the legislature or to congress, or of electors of president and vice-president of the United States, they each forfeit fifty dollars to their city, town, or plantation, to be recovered in action of debt by the treasurer, or by any citizen thereof when said treasurer is a member of the delinquent board. R. S. c. 6, § 79.

If any person, required to summon the voters of a city, town, or plantation to assemble at any meeting for choice of any officers mentioned in the preceding section, neglects to do so, or to make due return of the warrant therefor, he forfeits twenty-five dollars to his city, town, or plantation for each offense, to be recovered as provided in the preceding section; but if he willfully neglects or refuses, he forfeits not less than fifty, nor more than two hundred dollars, half to the state and half to the prosecutor, to be recovered by indictment. R. S. c. 6, § 81.

A copy of the record of the warrant for calling the town meeting is competent evidence, without producing the original warrant, or showing its loss. 21 Me. 63.

Selectmen elected at a meeting illegally called, may call a town meeting, if they have acted as selectmen. 57 Me. 541.

The constable must himself sign the return on the warrant for the meeting. 56 Me. 390.

See also decisions under Town and Annual Meetings.

CHAPTER XIV.

ELECTIONS.

PROCEEDINGS AT ELECTIONS.

The selectmen or other officers, required by the constitution and laws to preside at any such (that is, for the election of state officers or electors of president, vice-president) meeting, shall have all the powers of moderators of town meetings, as provided in chapter four; and they shall refuse the vote of any person not qualified to vote. R. S. c. 6, § 36.

If a majority of the selectmen are absent from any such meeting duly warned, or, being present, neglect or refuse to act as such and to do all their duties, the voters may choose so many selectmen *pro tempore*, as are necessary to constitute or to complete the number competent to act. R. S. c. 6, § 37.

During the choice of selectmen *pro tempore* any selectman present may act as moderator; if no selectmen are present, or if those present neglect or refuse to act as such, the town clerk shall preside; and the person so presiding shall have all the powers and discharge the duties of moderator. R. S. c. 6, § 38.

Selectmen *pro tempore* accepting the trust, shall be sworn faithfully to discharge the duties of said office, so far as relates to such meeting and election; and in making a record and return of the votes, as the constitution or laws require, and in all matters incidental to the trust, they shall have the powers of permanent selectmen, and be subject to the same duties and liabilities. R. S. c. 6, § 39.

Whenever any territory is set off from one town and annexed to another, the inhabitants of the territory set off, otherwise qualified, may vote for representative to congress, senators or representatives to the legislature, in the town to which they are annexed, if said town is within the congressional, senatorial, or representative district, as the case may be, to which they previously belonged; otherwise, such inhabitants may vote for said officers in the town from which they were set off, until the

next congressional, senatorial, or representative apportionment has been made. R. S. c. 6, § 40.

The officers presiding at any election, except for the choice of town officers, shall use the check list herein required at the polls during the election of governor, senators, representatives, and other public officers requiring like qualifications in the electors, and use but one ballot box, to be furnished at the expense of the town; and no votes shall be received unless delivered by the voter in person after he has audibly announced his name to the presiding officers, unless physically unable to do so, and they have had opportunity to be satisfied of his identity and find his name on the list and mark it, and ascertain that his vote is single. R. S. c. 6, § 41.

Clerks of towns shall preserve the check lists used at the September elections, for one year without alteration, and shall furnish to any person a certified copy thereof within twenty days after demand and payment or tender of the legal charges therefor, under the penalty provided in section seventy-eight of chapter six of revised statutes. R. S. c. 6, § 42.

The town clerk shall have the list of voters provided for by sections forty-three and forty-four of chapter five of the revised statutes at every town meeting held for the choice of town officers required by law to be chosen by ballot, and it shall be kept and used as a check list at the polls by said clerk or moderator at such meeting, in the manner prescribed for selectmen or assessors by section forty-one of chapter six of the revised statutes, if demanded by one-third of the voters present. R. S. c. 5, § 45.

On petition for mandamus against the clerk of a town, praying that the petitioner may be allowed to make examination of the ballots, votes, stickers and check lists in his custody which were used and unused at a state election and at which election the petitioner was supported as a candidate for representative to the legislature the court *Held*, that the petitioner had a legal right to inspect the ballots, and that the town clerk must accord the same to him. "It does not follow, however, that the petitioner or anyone in his behalf can sort or count, or in any way handle or even touch the ballots. He can inspect them and they must be exposed to his inspection, but they are all the while in the custody of the clerk and he is responsible for them. The inspection must be in his presence, and he can make and insist on such regulations or restrictions consistent with the right of

inspection as will secure every ballot like any other record from loss, impairment or change in any respect. The clerk can afterwards reseal the package for greater security until inspection is again required by some person interested." 92 Me. 159.

Ballot boxes used at election shall be covered at the top with a slide only, which shall be kept shut, except when opened to receive a ballot; but such boxes may contain mechanical devices which tend to prevent fraud in elections and do not materially abridge the rights of voters; and if the presiding officers do not comply with the requirements of this chapter, or attempt to evade the same, they shall be subject to the penalties provided in section seventy-eight. R. S. c. 6, § 44.

Any penalty provided in this chapter, which may be recovered by the treasurer, may, if the treasurer refuses or neglects for ten days after written request of any voter to commence suit therefor, be recovered by said voter in a suit in his own name, to the same uses as if recovered by said treasurer. R. S. c. 6, § 80.

No ballot shall be received at any election of state or town officers, unless in writing or printing upon clean white paper without any distinguishing mark or figures thereon, besides the official endorsement the names of the persons voted for and the offices to be filled; but no vote shall be rejected on this account after it has been received into the ballot box. R. S. c. 6, § 43. Applies only to election of town officers. See Australian Ballot Bill. The selectmen are the judges of what constitute distinguishing marks. 54 Me. 602.

When at a town meeting held for election of representatives to the legislature, in a town not classed with other towns as a representative district, by reason of persons having an equal number of votes, a full choice of representatives is not effected, the meeting shall be adjourned to the same day of the week following, and to the same hour and place at which the first meeting was called; and at such adjourned meeting the voters shall give in their votes for so many representatives as are necessary to make up the number to which said town is entitled; and like adjournments shall be had until the full number is elected. R. S. c. 6, § 49.

All town meetings, required for election of county treasurer, of register of deeds, of representatives to congress, or of electors of president and vice-president of the United States, or for the determination of questions submitted to the people by the legislature, shall, as to calling, notifying and conducting them, be

subject to the regulations made in this chapter for election of governor, senators and representatives, unless otherwise provided by law. R. S. c. 6, § 50.

To determine the result of any election by ballot, the number of persons who voted shall first be ascertained by counting the whole number of separate ballots given in, which shall be distinctly stated, recorded, and returned. No person ineligible to the office shall be declared elected; but such votes shall be counted, to determine whether any person has received the necessary number of all votes cast. In case of representatives to congress and members of the legislature, registers of deeds, and county and state officers, except where a different rule is prescribed in the constitution, the person or persons, not exceeding the number to be voted for at any one time for any such office, having the highest number of votes given at such election shall be declared elected, and the governor shall issue a certificate thereof. If, by reason of two or more persons receiving an equal number of votes, the election of the requisite number of officers cannot be declared without declaring more than the requisite number elected, no one of those having an equal number of votes shall be declared elected. In all other cases no person shall be declared elected, who has not received a majority of the whole number of votes counted as aforesaid; and if a number greater than is required to be chosen receive a majority of said whole number, the number so required, of those who have the greatest excess in votes over such majority, shall be declared elected. If the number to be elected cannot be so completed by reason of any two or more of such persons having received an equal number of votes, the persons having such equal numbers shall be declared not elected. In all cases not otherwise provided for, if no person eligible to the office receives the requisite number of votes to elect him, then the governor shall order a new election; *provided, however*, that nothing in this section shall give the governor and council authority to determine questions of eligibility in cases of senators and representatives to the legislature. R. S. c. 6, § 51.

The clerk of each town shall cause to be delivered at the office of the secretary of state, the returns of votes given in his town, for governor, senators, representatives to the legislature, representatives to congress, electors of president and vice-president of the United States, and for county officers, within thirty days next succeeding any meeting for their election, or shall deposit them, post paid, in some post office, directed to the

secretary of state, within fourteen days after such meeting, to be transmitted by mail; and shall also forward to such office, as soon as practicable, a statement attested by him of the number of votes for said several officers, given at such election in his town, which shall be opened and filed by the secretary, and kept for public examination. R. S. c. 6, § 54.

If any such return is not received by the secretary of state within thirty days next after such meeting, he shall forthwith notify the county attorney of the county in which such town is situated, who shall give immediate notice thereof to the clerk of such town, and unless he receives satisfactory evidence that said clerk has complied with the requirements of the preceding section, he shall prosecute for the penalty hereinafter provided. R. S. c. 6, § 55.

When such original return is lost or destroyed, the selectmen and clerk of such town, on receiving information of such loss or destruction, shall forthwith cause a copy of the record of the meeting, at which such vote was given, to be made with their certificate upon the same sheet that it is a true copy of the record, that it truly exhibits the names of all persons voted for, for the offices designated, and the number of votes given for each at such meeting, and that said copy contains all the facts stated in the original return. R. S. c. 6, § 56.

The selectmen and town clerk, who were present at the meeting and signed the original return, shall sign the certificate mentioned in the preceding section, designating their office against their names as in the original return, and make oath that said copy and certificate are true, before some justice of the peace of the county, who shall make certificate of such oath on the same paper. R. S. c. 6, § 57.

Such copy and certificates shall then be sealed up, and directed to the secretary of state, with the nature of the contents written on the outside; and the clerk of such town shall cause the same to be delivered into the office of the secretary of state, as soon as may be. R. S. c. 6, § 58.

When the selectmen of any town not classed with others as a representative district, have knowledge that the seat of a representative thereof has been vacated, they shall forthwith issue their warrant, giving at least seven days' notice, for a meeting of the electors of said town to fill such vacancy; and at such meeting like proceedings shall be had, as at any meeting held on the second Monday in September for the like purpose. R. S. c. 6, § 60.

CHAPTER XV.

ELECTIONS.

ELECTION OF GOVERNOR.

The meeting for the election of governor shall be notified, held, and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time, as those for senators. Const. art. 5, § 3.

The governor shall, at the commencement of his term, be not less than thirty years of age, a natural born citizen of the United States, have been five years a resident of the state, and at the time of his election, and during the term for which he is elected, be a resident of said state. No person holding any office or place under the United States, this state, or any other power, shall exercise the office of governor. Const. art. 5, §§ 4 and 5.

A plurality of all the votes returned are necessary to an election. If no person has a plurality, the house of representatives shall, by ballot, elect two from the persons having the four highest number of votes, if so many there be, and return them to the senate; and the senate shall, by ballot, elect one of them governor. Const. art. 5, § 3.

The governor is commander-in-chief of the army and navy of the state, and of the militia, except when called into the actual service of the United States. Const. art. 5, § 7.

When the office of governor becomes vacant, the president of the senate is governor. In case of vacancy in the office of president of the senate, who has been so acting as governor, the speaker of the house of representatives shall exercise the office until a president of the senate is chosen; and, when all these offices are vacant at the same time, the secretary of state must, by proclamation, convene the senate, that a president may be chosen to exercise the office of governor. Const. art. 5, § 14.

CHAPTER XVI.

ELECTIONS.

ELECTION OF SENATORS AND APPORTIONMENT.

The senate shall consist of not less than twenty nor more than thirty-one members, elected at the same time, and for the same term as the representatives. Const. art. 4, part 2, § 1 as amended.

The meetings within this state for the election of senators shall be notified, held and regulated and the votes received, sorted, counted, declared, and recorded, in the same manner as those for representatives. And fair copies of the list of the votes shall be attested by the selectmen and town clerks of towns, and assessors and clerks of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office, thirty days at least before the first Wednesday of January. Const. art. 4, § 3.

The state is divided into sixteen districts for the choice of senators, and each district shall be entitled to elect the number of senators herein provided, for the term of ten years. Resolves 1901 c. 141.

The county of York shall form the first district, and be entitled to elect three senators.

The county of Cumberland shall form the second district, and be entitled to elect four senators.

The county of Oxford shall form the third district, and be entitled to elect one senator.

The county of Androscoggin shall form the fourth district, and be entitled to elect two senators.

The county of Franklin shall form the fifth district, and be entitled to elect one senator.

The county of Sagadahoc shall form the sixth district, and be entitled to elect one senator.

The county of Kennebec shall form the seventh district, and be entitled to elect three senators.

The county of Somerset shall form the eighth district, and be entitled to elect two senators.

The county of Piscataquis shall form the ninth district, and be entitled to elect one senator.

The county of Penobscot shall form the tenth district, and be entitled to elect three senators.

The county of Lincoln shall form the eleventh district, and be entitled to elect one senator.

The county of Knox shall form the twelfth district, and be entitled to elect one senator.

The county of Waldo shall form the thirteenth district, and be entitled to elect one senator.

The county of Hancock shall form the fourteenth district, and be entitled to elect two senators.

The county of Washington shall form the fifteenth district, and be entitled to elect two senators.

The county of Aroostook shall form the sixteenth district, and be entitled to elect three senators.

The senators shall be twenty-five years of age at the commencement of the term for which they are elected, and in all other respects their qualifications shall be the same as those of the representatives. Const. art 4, part 2, § 6.

Form of return of election of senators may be the same as for representatives, the necessary changes being made.

CHAPTER XVII.

ELECTIONS.

ELECTION OF REPRESENTATIVES TO THE STATE LEGISLATURE.

The house of representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, and hold their office two years from the day next preceding the biennial meeting of the legislature. Amt. of Const. art. 25, § 2.

The meetings for the choice of representatives shall be warned in due course of law by the selectmen of the several towns, seven days at least before the election; and the selectmen shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting and in presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, and make a fair record thereof, in presence of the selectmen, and in open town meeting; and a fair copy of this list shall be attested by the selectmen and town clerk. Const. art. 4, § 5, part 1. See also succeeding chapter.

Whenever the seat of a member shall be vacated by death, resignation, or otherwise, the vacancy may be filled by a new election. Const. art 4, § 6. When the selectmen of any town not classed with others as a representative district, have knowledge that the seat of a representative thereof has been vacated, they shall forthwith issue their warrant, giving at least seven days' notice, for a meeting of the electors of said town to fill such vacancy; and at such meeting like proceedings shall be had, as at any meeting held on the second Monday in September for the like purpose. R. S. c. 6, § 60.

A plurality of votes is sufficient to elect representatives. See Proceedings at Elections.

When, at a town meeting held for the election of representatives to the legislature in a town not classed with other towns

as a representative district, by reason of persons having an equal number of votes, a full choice of representatives is not effected, the meeting shall be adjourned to the same day of the week following, and to the same hour and place at which the first meeting was called; and at such adjourned meeting, the voters shall give in their votes for so many representatives as are necessary to make up the number to which said town is entitled; and like adjournments shall be had until the full number is elected. R. S. c. 6, § 49.

Notice of intention to contest the right of any person claiming to be elected to the house of representatives, with a statement of the reason for so doing, may be served on such person by the contestant at any time after the election, and shall be served at least fifteen days prior to the organization of the house; and all testimony on either side shall be by depositions taken in accordance with the statute or by parol evidence and presented to said body within three days from the commencement of the session. If this law is not strictly complied with, except in extreme cases where injustice would be done if a continuance was not allowed, the party neglecting shall be denied a postponement, and the committee on elections shall proceed to determine the case by the testimony before them. R. S. c. 6, § 68.

When any person intends to contest, before the house of representatives, the right of any other person to his seat therein, he shall present his petition to said house within three days after its organization, stating the grounds upon which he proposes to contest such seat. Depositions may be taken in the manner authorized by the provisions of chapter one hundred and nine of the revised statutes, in cases of contested senatorial elections. R. S. c. 6, § 69.

Form of Certificate of the Election of Representative.

STATE OF MAINE.

At a legal meeting of the inhabitants of town of —, in the county of —, qualified by the constitution to vote for representatives, held on the second Monday of September, being the — day of said month, A. D. —, the said inhabitants gave in their votes for a representative to represent them in the legislature of this state; and the same were received, sorted, counted, and declared in open town meeting by the selectmen who presided, and in the presence of the town clerk, who formed a list of the persons voted for, and made a record thereof as follows:

For A. B. — votes.

For C. D. — votes.

The whole number of votes given in was —.

A. B., }
C. D., } *Selectmen of* —.
E. F., }

Attest,

A. B., *Town Clerk.*

Blanks are furnished by secretary of state for returns made to him.

The votes given must be in writing, and not in figures; and the number of votes for each candidate, and the aggregate number, must be inserted in the return.

No person shall be a member of the house of representatives unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this state one year, and for the three months next preceding the time of his election shall have been, and during the period for which he is elected shall continue to be, a resident in the town or district which he represents. Const. art. 4, part 1, § 4.

CHAPTER XVIII.

ELECTIONS.

ELECTION OF REPRESENTATIVES IN CLASSED TOWNS.

The meetings within this state for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the selectmen and in open town meeting. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes

received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be subject to all the duties, which selectmen and town clerks have and are subject to by this constitution. And fair copies of the lists of votes shall be attested by the selectmen and town clerks of towns, and the assessors of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January biennially. Const. art. 4, § 5.

Form of a Certificate of Election.

At a legal meeting of the inhabitants of the towns of — qualified by the constitution to vote for representatives to the state legislature, to give in their votes for a representative to represent said towns as a representative district in the state legislature, the same were received, sorted, counted, and declared in open town meeting by the selectmen of said towns, who presided, and in the presence of the clerks of said towns, who formed lists of the persons voted for, and made record thereof, as follows:

Town of —, A. B., — votes for representative.

Town of —, C. D., — votes for representative.

Town of —, A. B., — votes for representative.

Town of —, C. D., — votes for representative.

———— votes.

The whole number of ballots given in was —; and, the said A. B. having the highest number of all the votes given in, the said selectmen of said towns have delivered to him certified copies of said lists of votes as aforesaid.

Given under our hands — this — day of —, A. D. 19—.

A. B., }
C. D., } *Selectmen of* —.

G. H., }
H. I., } *Selectmen of* —.

O. B., }

Blanks are furnished by secretary of state for returns made to him.

When the selectmen of the oldest town in a district are notified, or otherwise satisfied, that at the last meeting of the district for the election of a representative no choice was effected, or that the seat of their representative has been vacated, they shall, as soon as may be, leaving a convenient time for calling meetings in the several towns, appoint a day of election to fill such vacancy, and notify the selectmen of the other towns accordingly. R. S. c. 6, § 66.

The selectmen of the several towns shall call meetings upon the day appointed, and proceedings shall then be had as required by the constitution and laws for the election of representatives on the second Monday of September. R. S. c. 6, § 67.

Towns and plantations classed into districts for the choice of a representative, have a right to choose one, though a majority of the towns may vote not to send. 6 Me. 486. It seems that a majority of voters cannot bind the minority by voting not to elect a representative. Ib.

CHAPTER XIX.

ELECTIONS.

APPORTIONMENT OF REPRESENTATIVES.

The following is a full analysis of the "Resolve of nineteen hundred and one" for apportioning the representatives to the sixty-sixth legislature and to, and including the legislature of nineteen hundred and eleven.

The county of Androscoggin shall choose twelve representatives, to be apportioned as follows: Lewiston, four; Auburn, two; Lisbon, one; Poland and Durham, one; East Livermore and Wales, one; Turner and Livermore, one; Mechanic Falls and Minot, one; Webster, Leeds and Greene, one.

The county of Aroostook shall choose thirteen representatives, to be apportioned as follows: Caribou, one; Fort Fairfield, one; Presque Isle, one; Houlton, one; Madawaska, Frenchville, Saint Agatha, sixteen, range four-five and seventeen, range four-five, one; Limestone, Washburn, Woodlands, New Sweden, Perham, Stockholm plantation and Westmanland plantation, one; Van Buren, Grand Isle, Hamlin plantation, Connor plantation, Cyr Plantation, Caswell plantation and seventeen, range three, one; Easton, Blaine, Mars Hill, Bridgewater, Westfield plantation and E plantation, one; Littleton, Monticello, Hammond plantation, Smyrna, Ludlow, Merrill plantation, Moro plantation, New Limerick, eight ranges three, four and five, seven, ranges three, four and five, and B, range two, one; Linneus, Hodgdon, Cary plantation, Amity, Orient, Weston, Haynesville, Bancroft, Reed plantation, Glenwood plantation, Leavitt plan-

tation and A, range two, one; Sherman, Island Falls, Oakfield, Dyer Brook, Hersey, Crystal plantation, Benedicta, Silver Ridge plantation, Molunkus plantation, Madwahoc plantation, one, range five, two, range four, three, ranges three and four, four, ranges three and four, one; Fort Kent, Wallagrass plantation, Saint Francis plantation, New Canada, Eagle Lake plantation, Winterville plantation, Allagash plantation, fourteen, ranges five, six, seven and eight, fifteen, ranges five, six and eight, sixteen, ranges six and eight, and all the unorganized townships west of range eight, in Aroostook county, one; Ashland, Mapleton, Castle Hill, Masardis, Sheridan, Portage Lake, Chapman, Wade, Oxbow, Garfield, Nashville, thirteen, ranges five, six, seven and eight, twelve, ranges seven and eight, eleven, ranges seven, eight and four, ten ranges three, four, six, seven and eight, nine, ranges, three, four, five, seven and eight, one.

The county of Cumberland shall choose twenty-two representatives, to be apportioned as follows: Portland, seven; Westbrook, two; Brunswick, two; South Portland, one; Bridgton, one; Gorham, one; Freeport and Pownal, one; Falmouth and Cumberland, one; Windham and Cape Elizabeth, one; Baldwin, Standish and Sebago, one; New Gloucester, Gray and Raymond, one; Otisfield, Harrison, Naples and Casco, one; Harpswell, for the years nineteen hundred and three, nineteen hundred and seven and nineteen hundred and eleven, one; Scarboro, for the years nineteen hundred and five and nineteen hundred and nine, one; North Yarmouth, for the year nineteen hundred and three, one; Yarmouth, for the years nineteen hundred and five, nineteen hundred and seven, nineteen hundred and nine and nineteen hundred and eleven, one. Harpswell shall choose one for the years nineteen hundred and four and nineteen hundred and eight, if, by amendment to the constitution, annual and regular sessions of the legislature shall be held in those years. Scarboro shall choose one in the years nineteen hundred and six and nineteen hundred and ten, if, for the same reason, such sessions shall be held in those years. North Yarmouth shall choose one for the year nineteen hundred and four, if, for the same reason, such session shall be held in that year. Yarmouth shall choose one in the years nineteen hundred and six, nineteen hundred and eight and nineteen hundred and ten, if, for the same reason, such sessions shall be held in those years.

The county of Franklin shall choose four representatives, to be apportioned as follows: Farmington, Chesterville, Temple, Per-

kins and Washington, one; Jay, Wilton and Carthage, one; Phillips, Weld, Salem, Madrid, Avon, Rangeley, Rangeley plantation, Dallas, Greenvale, Redington and all territory not included in any other district, one; New Sharon, Industry, New Vineyard, Freeman, Kingfield, Eustis, Strong, Lang, Coplin, Lowell, Jerusalem, Crocker and number four, range three, one.

The county of Hancock shall choose eight representatives, to be apportioned as follows: Ellsworth, one; Eden, one; Mount Desert, Tremont, Swan's Island and Cranberry Island, one; Deer Isle, Stonington, Sedgwick, Isle au Haut and Eagle Island, one; Bluehill, Surry, Hancock, Lamoine and Trenton, one; Bucksport, Penobscot, Dedham, Otis, Mariaville, Amherst and Verona, one; Orland, Brooksville, Castine, Brooklin, Long Island and Aurora, one; Franklin, Gouldsboro, Sullivan, Sorrento, Winter Harbor, Eastbrook, Waltham, townships seven, eight, nine, ten, twenty-one and thirty-three, one.

The county of Kennebec shall choose thirteen representatives, to be apportioned as follows: Augusta, two; Waterville, two; Gardiner, one; Clinton, Winslow and Unity plantation, one; Windsor, Benton, Albion and China, one; Vassalboro, Pittston and Randolph, one; Chelsea and Litchfield, one; Manchester, Hallowell and Farmingdale, one; West Gardiner, Monmouth and Winthrop, one; Wayne, Fayette, Sidney, Belgrade and Vienna, one; Readfield, Mount Vernon, Rome and Oakland, one.

The county of Knox shall choose seven representatives, to be apportioned as follows: Rockland, two; Rockport and Saint George, one; Camden, Appleton and Hope, one; Warren, Union and Washington, one; Vinalhaven, South Thomaston, North Haven and Hurricane Isle, one; Thomaston, Cushing, Friendship, Matinicus Isle, Muscle Ridge and Criehaven, one.

The county of Lincoln shall choose four representatives, to be apportioned as follows: Waldoboro, Jefferson and Bremen, one; Bristol, Damariscotta, Nobleboro, Edgecomb and Monhegan, one; Newcastle, Whitefield, Wiscasset, Dresden and Alna, one; Boothbay, Boothbay Harbor, Southport, Westport and Somerville, one.

The county of Oxford shall choose seven representatives, to be apportioned as follows: Rumford, one; Norway, Oxford and Hebron, one; Paris, Buckfield and Milton plantation, one; Porter, Hiram, Brownfield, Fryeburg and Lowell, one; Dixfield, Canton, Hartford, Sumner, Peru and Mexico, one; Woodstock, Greenwood, Albany, Stoneham, Stow, Sweden, Waterford and

Denmark, one; Bethel, Mason, Gilead, Newry, Upton, Grafton, Hanover, Andover, Byron, Roxbury, Lincoln plantation, Magalloway plantation, Batchelder's grant and all unorganized plantations, one.

The county of Penobscot shall choose seventeen representatives, to be apportioned as follows: Bangor, three; Brewer, one; Old Town, one; Springfield, Carroll, Winn, Kingman, Prentiss, Medway, Drew plantation, Lakeville plantation, Webster plantation and township number five, range one, N. B. P. P., one; Lincoln, Lee, Chester, Woodville, Mattamiscotis, Mattawamkeag and township number three, range one, N. B. P. P., one; Orono and Bradley, one; Lagrange, Edinburg, Howland, Maxfield, Enfield, Passadumkeag, Lowell, Burlington, Seboeis plantation, Grand Falls plantation and Summit plantation, one; Hampden, Orrington and Veazie, one; Alton, Argyle, Greenbush, Greenfield, Milford, Clifton, Eddington and Holden, one; Charleston, Bradford, Corinth, Hudson and Kenduskeag, one; Glenburn, Levant, Hermon and Carmel, one; Newport, Exeter and Corinna, one; Dixmont, Etna, Newburg, Plymouth and Stetson, one; Dexter and Garland, one; Patten, Mt. Chase, Millinocket, Stacyville plantation and all territory not otherwise classed, one.

The county of Piscataquis shall choose four representatives, to be apportioned as follows: Dover, Sangerville and Parkman, one; Foxcroft, Guilford, Abbot, Sebec, Barnard plantation and Bowerbank plantation, one; Brownville, Katahdin Iron Works, Williamsburg, Atkinson, Orneville, Medford, Milo, College Townships and Lake View plantation, one; Wellington, Kingsbury plantation, Blanchard, Shirley, Monson, Greenville, Squaw Mountain township, Gore A, number two, Day's Academy grant, number six, range thirteen, Chesuncook township, Northeast Carry township, Willimantic, Elliotsville plantation, Lily Bay township, Kineo and all townships not enumerated, one.

The county of Sagadahoc shall choose four representatives, to be apportioned as follows: Bath, two; Bowdoinham, Phippsburg, Topsham and West Bath, one; Bowdoin, Richmond, Perkins, Woolwich, Arrowsic and Georgetown, one.

The county of Somerset shall choose seven representatives, to be apportioned as follows: Skowhegan, one; Fairfield, Smithfield and Mercer, one; Madison, Solon and Athens, one; Pittsfield, Detroit and Palmyra, one; Norridgewock, Anson, New Portland and Starks, one; Hartland, Harmony, Saint Albans, Ripley, Cambridge, Cornville and Canaan, one; Bingham, Bige-

low plantation, Brighton plantation, Carratunk plantation, Concord, Dead River plantation, Dennistown plantation, Embden, Flagstaff plantation, the Forks plantation, Highland plantation, Jackman plantation, Lexington plantation, Mayfield plantation, Moose River plantation, Moscow, Pleasant Ridge plantation and West Forks plantation, one.

The county of Waldo shall choose five representatives, to be apportioned as follows: Belfast, one; Winterport, Frankfort, Monroe, Brooks and Jackson, one; Burnham, Troy, Unity, Thorndike, Freedom, Montville and Knox, one; Prospect, Stockton Springs, Searsport, Swanville, Waldo and Isleboro, one; Northport, Lincolnville, Searsmont, Belmont, Morrill, Liberty and Palermo, one.

The county of Washington shall choose ten representatives, to be apportioned as follows: Eastport, one; Calais, one; Lubec and Trescott, one; Jonesport, Machiasport and Cutler, one; Harrington, Columbia, Columbia Falls and Addison, one; Cherryfield, Steuben, Milbridge, Deblois and Beddington, one; Machias, Jonesboro, Roque Bluffs, Centerville, Whitneyville, Northfield and Wesley, one; Pembroke, Perry, Charlotte, Meddybemps, Cooper, Alexander and Robbinston, one; East Machias, Marshfield, Crawford, Marion, Whiting, Dennysville, Edmunds and number fourteen plantation, one; Princeton, Danforth, Vanceboro, Baileyville, Baring, Topsfield, Brookton, Waite, Forest City, Kossuth plantation, Talmadge, Codyville plantation, Lambert Lake plantation, number twenty-one plantation and Grand Lake Stream plantation, one.

The county of York shall choose fourteen representatives, to be apportioned as follows: Biddeford, two; Saco, one; Sanford, one; Parsonfield, Cornish and Newfield, one; Waterboro, Shapleigh and Limerick, one; Alfred, Lyman and Limington, one; North Berwick, Lebanon and Acton, one; Buxton and Hollis, one; Kennebunk and Dayton, one; South Berwick and Old Orchard, one; Berwick and Wells, one; Kennebunkport and York, one; Kittery and Eliot, one.

After a general representative apportionment has been made, conformably to the constitution, the legislature has not the constitutional power to alter the representative districts established by that apportionment. 33 Me. 586; Const. art. 4, § 3.

CHAPTER XX.

ELECTIONS.

THE ELECTION OF REPRESENTATIVES TO CONGRESS.

The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter any such regulations, except as to places of choosing senators. Const. U. S. art. 1, § 4.

The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for the electors of the most numerous branch of the state legislature. Const. U. S. art. 1, § 2.

Act providing for the choice of representatives to congress, approved March sixteenth, nineteen hundred and one, and to continue in force until an apportionment shall be made after taking the thirteenth census, is as follows:

The counties of York and Cumberland shall compose the first district, and be entitled to one representative.

The counties of Oxford, Franklin, Androscoggin, Sagadahoc, Knox and Lincoln shall compose the second district, and be entitled to one representative.

The counties of Kennebec, Somerset, Waldo, and Hancock shall compose the third district, and be entitled to one representative.

The counties of Penobscot, Piscataquis, Aroostook, and Washington shall compose the fourth district, and be entitled to one representative.

The representatives chosen in the several districts shall, at the time of their election, be residents therein.

The election shall take place and be on the second Monday of September, nineteen hundred and two, and thereafter, biennially. P. L. 1901 c. 164.

Town meetings for the election of the representatives to congress are to be called and conducted as those held for the election of governor, senators, and representatives, unless otherwise provided by law. R. S. c. 6, § 50.

In case there should be no choice of the representative to which any district may be entitled, the governor shall order a new election. Whenever a vacancy occurs in the representation of the state in the national house of representatives, the governor shall issue his proclamation for an election to fill the same. If congress is in session when such vacancy occurs, the proclamation shall issue forthwith; otherwise, in season to secure representation at the next called or regular session of congress. R. S. c. 6, §§ 51 and 52.

Two senators are elected by the legislature of each state, for a term of six years. U. S. Const. art. 1, § 3.

Form of Return.

STATE OF MAINE.

At a legal meeting of the inhabitants of the town of —, in the county of —, qualified by the constitution to vote for representatives in the legislature of this state, on the second Monday of September, being the — day of said month, in the year one thousand nine hundred and —, the said inhabitants gave in their votes for representative to represent this state in the congress of the United States, for the — congressional district; and the same were received, sorted, counted, and declared in open town meeting by the selectmen who presided, and in presence of the clerk of said town; and the selectmen at such meeting made public declaration of the persons voted for, and the number of votes they respectively had; and the clerk formed a list of the persons voted for, and made a record as follows:

For —, — votes.

For —, — votes.

The whole number of votes given in for representative in congress at said meeting was —.

A. B., }
C. D., } *Selectmen of —.*
E. F., }

Attest,

—, —, *Town Clerk.*

Blanks are furnished by secretary of state for returns to him.

Representatives to congress are elected by plurality. A representative must be twenty-five years of age, and have been seven years a citizen of the United States, and, when elected, an inhabitant of the state in which he shall be chosen. U. S. Const. art. 1, § 2.

CHAPTER XXI.

ELECTIONS.

ELECTION OF COUNTY OFFICERS.

In each county and in each registry district a register of deeds shall be chosen by ballot, by persons qualified to vote for representatives at town meetings, on the second Monday of September, in the year one thousand eight hundred and eighty-two, and every four years thereafter. R. S. c. 11, § 1.

The meetings for such election shall be notified, held and regulated, and the votes received, sorted, counted, declared, and recorded, in the same manner as votes for representatives, and fair copies of the lists of votes shall be attested by the municipal officers and clerks of towns, and sealed up in open town meeting; and town clerks shall cause them to be delivered into the office of the secretary of state within thirty days next succeeding such meeting. The governor and council shall, by the first day of December following, open and examine the same, and the lists of votes of citizens in the military service returned to said office. They have the same power to correct errors as is conferred by section five of chapter seventy-eight of the revised statutes; and they shall forthwith issue certificates of election to such persons as have a plurality of all the votes for each county or registry district; and the person thus elected, and giving the bond required by the following section approved by the county commissioners, shall hold his office for four years from the first day of the next January, and until another shall be chosen and qualified. R. S. c. 11, § 2.

He shall give bond with sufficient sureties to the county, in the sum of two thousand dollars for the faithful discharge of his duties. R. S. c. 11, § 3.

Vacancies shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime the governor, with the advice and consent of council, may fill vacancies by appointment, and the person so appointed

shall hold his office until the first day of January next after the election last mentioned. R. S. c. 11, § 4.

The towns of Hiram, Porter, Brownfield, Denmark, Fryeburg, Sweden, Lovell, Stoneham, and Stowe, in the county of Oxford, compose the Western registry district of Oxford county, and the register shall keep his office at Fryeburg. R. S. c. 11, § 6.

All that part of the county of Aroostook lying north of a line commencing at the southeast corner of township F, in the first range, west from the east line of the state, thence west on the south line of said township and the south line of township K in the second range, to township numbered fifteen in the third range, thence north to the northeast corner of township numbered fifteen in the third range, thence west to the northwest corner of township numbered fifteen in the third range, thence south to the southwest corner of township numbered fifteen in the third range, thence west to the northwest corner of township numbered fourteen in the fourth range, then south to the southwest corner of township numbered fourteen in the fourth range, thence west on the dividing line of townships thirteen and fourteen to the seventh range line, thence north to the northeast corner of township numbered thirteen in the eighth range, thence west to the west line of the state, compose the northern registry district of Aroostook county and the register shall keep his office in the town of Madawaska. R. S. c. 11, § 7.

The register of deeds of the Aroostook registry district of Aroostook county is hereby authorized to make copies in suitable volumes for preservation in the Aroostook registry, of the five volumes of Washington county records of deeds now in said registry, and of the certificates of the records thereof.

The copy of each deed or instrument recorded in said five volumes, and of the certificate of the record thereof, shall be attested by said register as a true copy from the Washington county records of deeds in the Aroostook registry, and copies of the record of such copies and certificates shall be admissible in evidence in all cases where copies of the original records would be admissible.

Said register shall receive such compensation for his services and expenditures in the premises, as may be allowed to him by any judge of the supreme judicial court, holding court in said county after said work is completed, to be paid out of the treasury of said county of Aroostook. P. L. 1891 c. 86.

Each register may appoint a clerk for whose doings and misdoings he shall be responsible, who shall be sworn. In case of sickness, absence or any temporary disability of the register, such clerk shall make and sign for him all certificates, and make all entries and minutes required to be signed or made by the register, and such certificates, entries and minutes, shall be as valid as if made by the register. R. S. c. 11, § 5.

In case of vacancy in the office of register and of his clerk in any county or registry district, the clerk of the judicial courts of the same county, being first sworn, shall perform all duties and services required of a register of deeds during such vacancy; complete all unfinished business; receive the same compensation and be subject to the same liabilities, as a register of deeds; and his certificate shall have the same effect as if made by the register. R. S. c. 11, § 8.

The records in each registry office shall be made on a paper of firm texture; well sized and finished, the principal ingredient of which is linen. The registers shall make an alphabetical index to the records without charge to the county, in the form known as ledger index, so that the same surname shall be recorded together in each column of index, or in lieu of such book shall make a suitable card index. All indexes made under the provisions of this section shall show, in addition to the names of the parties and the nature of the instrument, the date of the instrument, shall appear together, and all names in the town, city or incorporated place where the land conveyed is situated. As often as every ten years the register shall revise and consolidate such index in such manner that all deeds recorded since the last revision of the index shall be indexed so that the same surnames shall appear together, and all names in alphabetical order. Such revised and consolidated index shall contain all data as to each and every such deed or other instrument, as is above set forth. For this work the register shall receive a reasonable compensation to be approved by the county commissioners of the respective counties, and drawn from the county treasury. Whenever for any cause it may become necessary to revise, renew or replace any index made before the passage of this act, the new volume shall be made in conformity with the provisions hereof. R. S. c. 11, § 15.

No city, county or state officer whose duty it is to record conveyances of any kind, assignments, certificates or other documents or papers whatsoever, shall draft or aid in drafting any

conveyance, assignment, certificate or other document or paper which he is by law required to record, in full or in part; under a penalty of not exceeding one hundred dollars, to be recovered by any complainant by action of debt for his benefit or by indictment for the benefit of the county.

In each county some resident thereof shall be chosen on the second Monday of September, 1880, and every two years thereafter, by the ballots of person authorized by the constitution to vote for representatives. R. S. c. 12, § 1.

The meetings for their election shall be notified, held, and all proceedings as provided for the election of register of deeds. R. S. c. 12, § 2.

The person so elected and accepting shall give bond to the county for the faithful discharge of his duties in such sum as the commissioners order, and with such sureties as they approve in writing thereon, and shall hold his office for two years from the first day of the next January, and until another is chosen and qualified in his place. R. S. c. 12, § 3.

If a person so chosen declines to accept, or a vacancy occurs, the governor, with the advice and consent of council, may appoint a suitable resident of the county, who, having accepted the trust, given bond, and been sworn, shall be treasurer for the remainder of the term and until another is chosen and qualified. R. S. c. 12, § 4.

County commissioners shall be elected on the second Monday of September, 1880, and every two years thence following, by the written votes of electors qualified to vote for representatives. The votes shall be received, sorted, counted and declared, as votes for representatives are; the names of the persons voted for, the number of votes for each, and the whole number of ballots received, shall be recorded by the clerk in the town records, and true copies thereof, sealed and attested as returns of votes for senators, shall be transmitted to the secretary of state within thirty days. R. S. c. 80, § 4.

The board of commissioners shall consist of a chairman and two other citizens resident in the county, elected, or, in case of a vacancy, appointed by the governor, with the advice and consent of council.

The chairman shall be designated by them at their first meeting on or after the first day of January annually, to act for one year.

Each county elects a board of commissioners. R. S. c. 80, § 1.

Vacancies to occur by expiration of the term of office at the end of any year in which a biennial election is held, shall be filled by election on the second Monday of September in such year.

If but one is elected he shall hold the office for six years; if two, the one having the highest number of votes shall hold for six years and the next highest for four years; if three, two shall hold as last provided and the other for two years. If two have an equal number of votes, the governor, with the advice and consent of council, shall designate who shall hold for the longer and who the shorter term. R. S. c. 80, § 2.

Clerks of the judicial courts shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold their offices for four years. R. S. c. 81, § 1.

Before entering upon the discharge of official duty, each clerk shall be sworn and give a bond to the state, to be lodged in the office of its treasurer, approved by the governor and council in the sum of eight thousand dollars, with two or more sureties, conditioned that he will faithfully perform all the duties of his office, pay over all moneys, and safely keep and immediately deliver all records, files, papers, muniments in said office and property of the county, as required by law. R. S. c. 81, § 2.

County attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold office for two years, unless their terms of office are sooner terminated in the manner following, viz.: Upon the petition of not less than fifty adult citizens of any county, charging that the county attorney of such county has persistently failed to perform his legal duties, and specifying wherein he has so failed, the governor, upon hearing and satisfactory proof of such persistent failure, may remove such county attorney and fill the vacancy from the same political party to which said county attorney belongs, first giving to such county attorney, at least ten days before the date of the hearing, a copy of the charges and specifications against him and notice of the time and place of hearing thereon. None but a permanent resident of the county shall

hold the office of county attorney and removal therefrom vacates the office. R. S. c. 81, § 16.

Judges and registers of probate shall be elected by the people of their respective counties by a plurality of the votes given in at the biennial election, on the second Monday of September, and shall hold their offices for four years, commencing on the first day of January next after their election.

Vacancies occurring in said offices by death, resignation or otherwise shall be filled by election in manner aforesaid, at the September election next after their occurrence, and in the meantime, the governor, with the advice and consent of the council may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January thereafter. Const. art. 6, § 7.

Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners; and they enter upon the discharge of their duties on the first day of January following; but, when appointed to fill vacancies, their terms commence on their appointment. R. S. c. 65, § 2.

Similar provision as to registers of probate. R. S. c. 65, § 19.

No register shall be attorney or counsellor in or out of court in any suit or matter pending in the court of which he is register, nor in any appeal therefrom; nor be administrator, guardian, commissioner of insolvency, appraiser or divider of any estate, in any case within the jurisdiction of said court except as provided in section fifteen of chapter sixty-five of the revised statutes, nor be in any manner interested in the fees and emoluments arising therefrom, in such capacity; nor commence or conduct, either personally or by his agent or clerk any matter, petition, process or proceeding in the court of which he is register, in violation of this section, and for each and every violation of the preceding provisions of this section, such register shall be punished by imprisonment for not more than one year or by fine of not more than one thousand dollars. No register shall draft or aid in drafting any document or paper, which he is by law required to record in full or in part, under a penalty of not exceeding one hundred dollars, to be recovered by any complainant in an action of debt for his benefit, or by indictment for the benefit of the county. R. S. c. 65, § 27.

Sheriffs shall be elected by the people of their respective counties, by a plurality of the votes given in on the second Mon-

day of September, and shall hold their offices for two years from the first day of January next after their election. Vacancies shall be filled in the same manner as is provided in the case of judges and registers of probate. Const. art. 9, § 10.

Sheriffs shall be elected or appointed and shall hold their offices according to the constitution, and their election shall be effected and determined as is provided respecting county commissioners, and they shall enter upon the discharge of official duty on the first day of January following.

In counties of York, Cumberland, Kennebec and Penobscot gives bond for \$40,000.

In the other counties \$25,000. R. S. c. 82, § 1.

Such bond to be approved by the county commissioners and held in office of treasurer of state. R. S. c. 82, § 2.

CHAPTER XXII.

ELECTIONS.

ELECTIONS IN CITIES.

For all purposes mentioned in sections thirty-four and fifty of revised statutes, chapter six, the inhabitants of cities shall meet as the constitution requires, in ward meetings, to be notified and warned, as town meetings for similar purposes are. The warden shall preside; the clerk shall make such record as the constitution requires; and the city constable shall preserve order. R. S. c. 6, § 61.

The electors resident in any city may, at any meeting duly notified for the choice of representatives, vote for such representatives in their respective ward meetings, and the wardens in said wards shall preside impartially at such meetings, receive the votes of all qualified electors present, sort, count, and declare them in open ward meetings and in the presence of the ward clerk who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the warden and in open

ward meetings; and a fair copy of this list shall be attested by the warden and ward clerk, sealed up in open ward meeting, and delivered to the city clerk within twenty-four hours after the close of the polls. And the electors resident in any city may at any meetings duly notified and holden for the choice of any other civil officers for whom they have been heretofore required to vote in town meeting, vote for such officers in their respective wards, and the same proceedings shall be had by the warden and ward clerk in each ward, as in the case of votes for representatives. Const. art. 4, § 5; R. S. of Maine, page 30.

If the warden is absent from any such meeting, or refuses or neglects to preside, a warden *pro tempore* shall be chosen, and during such choice the ward clerk shall preside; and the warden *pro tempore*, accepting the trust, shall be sworn, and have the power and perform the duties of warden of such meeting, and shall be liable to like penalties. R. S. c. 6, § 62.

If no choice of representative, aldermen to call new ward meetings within two weeks. R. S. c. 6, § 65. Also to call meetings when seat of any representative becomes vacant. Ib.

The several islands within the city of Portland, so far constitute two separate wards as to entitle the voters of each of said wards to choose a warden, ward clerk and one constable, who shall be residents of said islands and of their respective wards. The first of said wards comprises Long Island, Crotch Island, Hope Island, Jewell's Island and Little Chebeague Island, or such parts of said islands as are within the city of Portland, and the ward meetings of said first ward shall be held on Long Island. The second of said wards comprise the remaining islands within the city of Portland, and the ward meetings of said second ward shall be held on Peak's Island. The electors of each of said wards may meet as provided in section forty-one, also for the choice of city officers, at the place designated, and may on the day of election, vote for all officers named in the warrant calling the meeting. R. S. c. 6, § 63.

The warden shall preside impartially at such meetings, receive the votes of all electors present, sort, count, and declare them in open meeting and in the presence of the clerk, who shall make a list of the persons voted for, with the number of votes for each person against his name, and the officers, respectively, and in open ward meeting and in the presence of the warden, shall make a fair record thereof; a fair copy of this list shall be attested by the warden and clerk, sealed up in open meeting, and

delivered to the clerk of ward number one in said Portland within eighteen hours after closing the polls, and the votes thus thrown shall belong to the last-mentioned ward. R. S. c. 6, § 64.

At the annual election for the choice of mayor and aldermen in cities, the electors, in each ward shall, by written ballot, elect a warden and clerk, who shall enter on their duties on the Monday following their election, and hold their offices one year therefrom, and until others are chosen and qualified in their places. R. S. c. 4, § 36. Assessors and subordinate officers of cities, when charter does not otherwise provide, are chosen on second Monday of March annually. R. S. c. 4, § 35.

Provisions in the charter of any city for the election of two persons to assist the warden in receiving, sorting and counting the ballots, are not affected by the provisions of the Australian Ballot Bill as amended; but persons so elected shall be deemed election clerks for that purpose; they shall equally represent the two political parties which, at the state election next preceding, cast the greatest number of votes. P. L. 1893 c. 267, § 2.

Australian Ballot Bill, see Proceedings at Elections.

For elections in any city see also the Charter of that City.

CHAPTER XXIII.

ELECTIONS.

ELECTIONS IN PLANTATIONS.

Commissioners of the counties containing unincorporated townships, shall, at the expiration of every period of five years from March, in the year of our Lord one thousand eight hundred and sixty-one, determine from the United States census, when taken the preceding year, and by actual enumeration when not so taken, what townships have not less than two hundred inhabitants, and make a suitable description and designation thereof, and return them to the secretary of state to be by him recorded. R. S. c. 4, § 113.

Immediately after making such return, said commissioners shall issue their warrant to one of the principal inhabitants of

each of such unincorporated townships, commanding him to notify the inhabitants thereof qualified to vote for governor, to assemble on a day and at a place named in the warrant, to choose a moderator, clerk, three assessors, treasurer, collector of taxes, constable, superintending school committee, and other necessary plantation officers. Notice of such meeting shall be given by posting an attested copy of the warrant therefor, in two public and conspicuous places in the township fourteen days before the day of meeting. The warrant with such inhabitant's return thereon shall be returned to the meeting, and the above named officers shall be chosen and sworn. R. S. c. 4, § 114.

But any unincorporated or unorganized township containing any number of inhabitants may be organized as follows: One or more of the county commissioners on written application, signed by three or more persons qualified to be voters, inhabitants of any unincorporated or unorganized township in their county, may issue a warrant to one of them requiring him to warn a meeting of the voters of such township residing within the limits described in the warrant; or when a state or county tax is laid on such township the state treasurer or said commissioners without application therefor, may issue such warrant to one of the principal inhabitants of such township; and in either case the warrant, notice of meeting and proceedings therein, shall be the same as provided in the preceding section. R. S. c. 4, § 115.

At the time and place appointed for meetings for the organization of plantations under the two preceding sections, a moderator shall be chosen by ballot by the voters present, to preside at such meeting, and the person to whom the warrant was directed shall preside until such moderator is chosen and by him sworn. A clerk, three assessors, treasurer, and superintending school committee shall be chosen by ballot, and sworn by the moderator or a justice of the peace. Other plantation officers may be chosen by ballot, or other method agreed on by vote of the meeting, and shall be sworn in the manner above named. R. S. c. 4, § 116.

Upon the organization of a plantation, the clerk and assessors shall transmit to the secretary of state, to be by him recorded, a certified copy of all proceedings had in effecting such organization, including the petition, if any, the warrant issued therefor and the return thereon, and the record of the meeting held in pursuance thereof, and a written description of the limits of

the plantation; and thereupon all laws applicable to organized plantations shall apply to plantations organized as herein provided; but plantations organized upon application of three or more citizens as above provided, shall not be required to pay state or county taxes unless by special order of the legislature. R. S. c. 4, § 117.

Organized plantations shall hold their annual meeting in March, and choose a clerk, three assessors, treasurer, collector of taxes, constable, superintending school committee, one or more surveyors of lumber, and two or more fence viewers; and when money is raised for repair of ways and bridges, may choose one or three road commissioners, as towns may do. R. S. c. 4, § 118.

Clerks of organized plantations shall make return to the secretary of state on blanks by him furnished for that purpose, on or before the first day of September annually, of the names of the assessors and clerks of their several plantations, and that the same have been sworn. When such return is not made by any such plantation, the secretary of state shall not furnish it with blanks for election returns, and no votes purporting to be cast by such plantation shall be counted or allowed by the governor and council. When a plantation is organized after the first day of July such return is not required to be made by the clerk thereof during that year. But the votes of such plantations shall not be counted or allowed by the governor and council for any purpose, during the year of its organization, unless it is organized at least sixty days prior to the second Monday in September. R. S. c. 4, § 119.

Laws relating to calling, notifying, and conducting town meetings and to the election, appointment, qualification, duties powers, compensation, liabilities, and penalties for official neglect and misconduct of town officers, apply to plantations and their officers, so far as applicable thereto, except when specially otherwise provided. Voters in plantations are liable to the same penalties for unlawful voting as voters in towns. R. S. c. 4, § 120.

Assessors of plantations shall be considered the selectmen thereof, for the purpose of performing such duties as the selectmen of towns perform. Treasurers, collectors, and constables of plantations, shall give such bond as such officers of towns are required to give, to be approved in like manner. The valuation of property for the assessment of taxes in plantations, as well as the assessment, collection and disposal thereof, shall be the same as in towns. R. S. c. 4, § 121.

The assessors of each plantation shall on or before the eleventh day of August in each year in which an election for governor, senators and representatives is held, prepare a list of such inhabitants, within its limits, as they judge to be constitutionally qualified to vote in the election of such state officers; deposit it in the office of the plantation clerk; and post and correct it in the manner required in case of towns. R. S. c. 6, § 118.

They shall call a meeting of such voters, to be held on the second Monday of September in every such year, at some convenient and central place in the plantation, for the election of governor, senators and representatives to the legislature, by a warrant in due form by them signed, in which the time, place and purposes of the meeting shall be set forth; and notice shall be given by posting a copy thereof in one or more public places in the plantation at least seven days before the day of meeting. Similar notice shall be given of all meetings for choice of representatives to the legislature, or to congress, of state and county officers, and of electors of president and vice-president. R. S. c. 6, § 119.

Such assessors shall preside impartially at all such meetings, receive the votes of all voters present, sort, count, and declare them in open plantation meeting and in presence of the clerk, who shall form a list of the persons voted for, with the number of votes for each person written out in words against his name, and make a full record thereof in presence of the assessors and in open plantation meeting. The clerk shall make fair copies of the list of voters so posted as corrected and of the names of all voters on said lists who were present and voted at said election, which shall be attested by the assessors and the clerk in open plantation meeting, and he shall cause the record of said votes to be delivered, within the time required by the constitution and the laws, to the person appointed to receive them, and shall cause the copy of the list of voters and of the names of the persons present and voting, to be transmitted to the secretary of state with the record of votes aforesaid. R. S. c. 6, § 120.

The votes so thrown shall be received and allowed for electors of president and vice-president of the United States, for governor, senators, and representatives, to the legislature, and to congress, and for county officers, the same as votes thrown in a town in said county. R. S. c. 6, § 121.

Without a return by the assessors to the office of the secretary of state, of certain and definite limits to the plantation, the organization is defective and of no validity. 40 Me. 218.

Contents of lost record of organization of a plantation for election purposes may be proved by parol evidence. 83 Me. 364.

Organization presumed to have been valid after lapse of fifty years, the organization having been recognized in various ways. Ib.

Electors living on islands adjacent to the mainland along the coast of the state and within the jurisdiction thereof, but not incorporated with any town, and all such electors living in other unorganized places may furnish lists of their polls and estates to the assessors of any adjacent town, on or before the first day of each April, and said assessors shall assess state and county taxes upon all such persons, and they shall be collected in the same manner and by the same officers as if such electors were inhabitants of such town. And such electors so presenting their polls and estates may vote in such town in all elections for governor, senators, representatives and county officers. R. S. c. 6, § 75.

CHAPTER XXIV.

ELECTIONS.

RETURN OF VOTES.

The clerk of each town shall cause to be delivered at the office of the secretary of state, the returns of votes given in his town, for governor, senators, representatives to the legislature, representatives to congress, electors of president and vice-president of the United States, and for county officers, within thirty days next succeeding any meeting for their election, or shall deposit them, post paid, in some post office, directed to the secretary of state, within fourteen days after such meeting, to be transmitted by mail; and shall also forward to such office, as soon as practicable, a statement attested by him of the number of votes for said several officers, given at such election in his town, which shall be opened and filed by the secretary, and kept for public examination. R. S. c. 6, § 54.

If any such return is not received by the secretary of state within thirty days next after such meeting, he shall forthwith notify the county attorney of the county in which such town is situated, who shall give immediate notice thereof to the clerk of such town, and unless he receives satisfactory evidence that said clerk has complied with the requirements of the preceding section, he shall prosecute for the penalty provided by law. R. S. c. 6, § 55.

When such original return is lost or destroyed, the selectmen and clerk of such town, on receiving information of such loss or destruction, shall forthwith cause a copy of the record of the meeting at which such vote was given, to be made with their certificate upon the same sheet, that it is a true copy of the record, that it truly exhibits the names of all the persons voted for, for the offices designated, and the number of votes given for each at such meeting, and that said copy contains all the facts stated in the original return. R. S. c. 6, § 56.

The selectmen and town clerk, who were present at the meeting and signed the original return, shall sign the certificate mentioned in the preceding section, designating their office against their names as in the original return, and make oath that said copy and certificate are true, before some justice of the peace of the county, who shall make certificate of such oath on the same paper. R. S. c. 6, § 57.

Such copy and certificates shall then be sealed up, and directed to the secretary of state, with the nature of the contents written on the outside; and the clerk of such town shall cause the same to be delivered into the office of the secretary of state, as soon as may be. R. S. c. 6, § 58.

Form of the Return of Votes for Governor.

At a legal meeting of the inhabitants of the — of —, in the county of —, qualified as the constitution requires to vote for governor, held on the second Monday of September, being the — day of said month, in the year of our Lord —, the said inhabitants gave in their votes for a governor, and the same were received, sorted, counted, and declared in open — meeting, by the — who presided, and in presence of the — clerk, who formed a list of the persons voted for, and made a record thereof, as follows:

For, &c.

A. B., }
C. D., } *Selectmen of —.*
E. F., }

Attest,

A. B., — Clerk.

The return of votes for senators and other officers may be the same as for governor, with the necessary variations. The returns from the cities and plantations shall be in similar form, varying as their different organization may require.

Forms for returns to be made to secretary of state are furnished by him.

CHAPTER XXV.

ELECTIONS.

ELECTION OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

The electors of president and vice-president shall be appointed in each state on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a president and vice-president. The number of electors shall be equal to the number of senators and representatives in congress to which each state is entitled at the time the president and vice-president to be chosen come into office. The state may, by law, provide for filling vacancies. When any state fails to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day, in such manner as the legislature of such state shall provide. U. S. Const. art. 2, § 2.

Whenever the election of president and vice-president of the United States is to take place, there shall be chosen from the inhabitants of the state, as many electors of president and vice-president as the state is entitled to; and on the Tuesday next after the first Monday in November of such year, the people qualified to vote for senators, shall assemble in town, plantation, city, or ward meeting, to be notified, held, and regulated in the manner prescribed by the constitution and laws for the election of such senators. R. S. c. 6, § 123.

The votes shall be sorted, counted, declared and recorded; and the returns of the number of ballots, and of the votes given for each elector, shall be made according to the constitution and laws to the secretary of state on or before the second Thursday after such meeting. R. S. c. 6, § 124.

Form of Return.

At a legal meeting of the inhabitants of the town of —, in the county of —, qualified to vote for electors of president and vice-president of the United States, held on Tuesday, the — day of November, A. D. 19—, the said inhabitants gave in their votes for such electors, and the same were received, sorted, counted and declared in open town meeting, by the selectmen who presided, and in presence of the town clerk, who formed a list of the persons voted for, and made record thereof, with the number of votes for each person on said list, against his name, as follows:

For A. B., — votes.

For C. D., — votes.

Signed,	G. H.,	} <i>Selectmen of —.</i>
	H. I.,	
	O. B.	

Attest,

G. H., *Town Clerk.*

The returns from the cities and plantations shall be in similar form, varying as their different organization may require.

The secretary of state shall procure blank returns of the proper form for such cities, towns and plantations, and furnish them to the several clerks thereof at least thirty days before the day for the election of electors as aforesaid. R. S. c. 6, § 130.

All laws in relation to the duties of city, town, and plantation officers, and of voters in the election of governor, senators and representatives to the legislature, and to the penalties incurred for their violation, apply, so far as applicable, to meetings held for the election of such electors, and to returns thereof. R. S. c. 6, § 131.

The electors shall convene in senate chamber at Augusta on the Saturday preceding the second Monday of January next after their election. R. S. c. 6, § 127.

Said electors, on said second Monday of January, shall vote by ballot for one person for president and one person for vice-president of the United States; one of whom, at least, shall not be an inhabitant of this state; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; they shall make and subscribe three certificates of all the votes by them given, each of which shall contain two distinct lists, one of the votes given for president, and the other of the votes given for vice-president; they shall seal them up and certify on each certificate, that a list of votes of the State of Maine for president and vice-president of the United States is contained therein. They or a majority of

them shall, under their hands, appoint a person to take charge of one of said certificates, and deliver it at the seat of government of the United States, to the president of the senate of the United States, before the fourth Monday of the month of January in which their meeting shall have been held; they shall forthwith forward by the post office, another of said certificates, directed to the president of the same senate, at the same seat of government; and they shall forthwith cause the other certificate to be delivered to the judge of the district court of the United States for the district of Maine. R. S. c. 6, § 128.

Electors shall receive as compensation ten dollars a day and such travel as members of the legislature receive. They may appoint a secretary and such other officers as they deem proper, who shall receive such reasonable compensation for their services as the electors shall allow them. R. S. c. 6, § 129.

CHAPTER XXVI.

ELECTIONS.

GENERAL PROVISIONS.

If any town officer, or such officer chosen *pro tempore*, willfully neglects or refuses to perform any duty required of him, or willfully does, authorizes, or permits to be done, anything prohibited by the constitution or by law, he shall for each offense, forfeit not less than fifty, nor more than five hundred dollars, and be imprisoned not more than nine, nor less than three months, except where otherwise expressly provided. R. S. c. 6, § 78.

Any officer who (in certain, prescribed cases) makes a false certificate, and makes oath to its truth, shall be punished for perjury, and be disqualified from holding any office under the constitution and laws of this state for ten years. R. S. c. 6, § 88.

Any municipal officer who strikes from the list of voters, after it has been prepared and posted, the name of any person residing in the town, without the notice and opportunity for hearing provided by law, forfeits not less than twenty nor more than

one hundred dollars to be recovered in an action on the case, by the person whose name was struck out. R. S. c. 6, § 85.

Whoever wrongfully alters, erases, or mutilates any name on a list of voters, or fraudulently votes in the name of another, or under an assumed name, shall for each offense be punished by fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding one year. R. S. c. 6, § 86.

If a person, to whom returns of votes of any city, town, or plantation, for governor, senators or representatives in congress, are entrusted by the clerk thereof to be forwarded to the office of the secretary of state, willfully neglects to use all proper means for their delivery within the time required, he shall forfeit not less than one hundred, nor more than five hundred dollars, or to be imprisoned not less than two, nor more than six months. R. S. c. 6, § 89.

At any meeting for the election of any officer, where a list of voters is necessary, whoever willfully votes before the presiding officer has had opportunity to find his name on said list, or knowing that it is not on it, or willfully gives any false answer or statement to the municipal officers of towns, cities or plantations when they shall be previously preparing such list, or presiding at such meeting, in order that his name or the name of any other person may be entered on such list, or his vote or that of another be received; or cast more than one vote at one balloting; or is disorderly at such meeting, forfeits for each offense, not exceeding one hundred, nor less than ten dollars. R. S. c. 6, § 92.

Whoever by bribery, menace, willful falsehood, or other corrupt means, directly or indirectly attempts to influence any voter in giving his vote or ballot, or to induce him to withhold it, or disturbs or hinders him in the free exercise of his right of suffrage, at any election held according to law and whoever receives or offers to receive a bribe for his vote as aforesaid shall be fined not more than five hundred dollars, or imprisoned not more than one year, and be ineligible to any office for ten years. R. S. c. 6, § 95.

Whoever at any election of state and county, or municipal officers, or of electors of president and vice-president, knowingly votes in any city, town, or plantation where he has no legal right to vote, shall be imprisoned in the county jail not less than three months, nor more than one year. R. S. c. 6, § 96.

No person shall make a bet or wager upon the result of any

election in the state, in money or in any kind of property, real or personal, under penalty of forfeiting the money or property so bet or wagered, to the town in which he resides; or if he does not reside in the state, then to the town in which the bet or wager is made, to be recovered in an action on the case. R. S. c. 6, § 97.

All conveyances, by deed or otherwise, of any interest in real estate, made by reason of any such bet or wager, are void. R. S. c. 6, § 100.

Whoever shall offer, or promise, or agree to receive any money or other valuable consideration for giving in his vote at any election held under the provisions of the constitution or of the sixth chapter of the revised statutes of this state, and shall in accordance with such offer, promise or agreement, give in his vote at such election, shall be fined not more than one hundred dollars, or imprisoned not more than one year, and shall be excluded from the right of suffrage for a term of ten years. R. S. c. 6, § 76.

The secretary of state shall furnish the mayors of cities, the selectmen of towns and assessors of plantations with copies of this law in a printed form suitable to be posted in conspicuous places in the voting precincts of every city, town or plantation, and said officers shall cause such copies to be so posted. R. S. c. 6, § 77.

If aldermen of cities, selectmen of towns, or assessors of plantations neglect to issue their warrant as required by law for a meeting for choice of state or county officers, representatives to the legislature, or to congress, or of electors of president and vice-president of the United States, they each forfeit fifty dollars to their city, town or plantation, to be recovered in action of debt by the treasurer, or by any citizen thereof when said treasurer is a member of the delinquent board. R. S. c. 6, § 79.

If any person required to summon the voters of a city, town or plantation to assemble at any meeting for choice of any officers mentioned in the preceding section, neglects to do so, or to make due return of the warrant therefor, he forfeits twenty-five dollars to his city, town or plantation for each offense, to be recovered as provided in section eighty of chapter six; but if he willfully neglects or refuses, he forfeits not less than fifty, nor more than two hundred dollars, half to the state and half to the prosecutor, to be recovered by indictment. R. S. c. 6, § 81.

If selectmen of a town or assessors of a plantation willfully

neglect to deposit a list of voters with the town or plantation clerk, and to post such lists, as are by law required, they each forfeit not less than fifty, nor more than one hundred dollars; and for each day's neglect after the twentieth day of August, and until the state election next ensuing, they each forfeit thirty dollars. R. S. c. 6, § 82.

If such selectmen or assessors willfully neglect or refuse to keep and use a check list, as provided in section forty-one, or willfully receive any vote prohibited by section forty-three or fraudulently receive the vote of any person not qualified to be an elector, as provided by the constitution, they each forfeit not less than fifty nor more than one hundred dollars. R. S. c. 6, § 83.

The penalties in the two preceding sections may be recovered in an action of debt, in the name and to the use of the town or plantation, where the offense is committed, to be prosecuted to final judgment at the request of any voter therein, by the treasurer, unless he is one of the delinquent officers, and in that case, by one of the constables. R. S. c. 6, § 84.

In no case, except as in sections seventy-nine and eighty-one, shall an officer of a town, incur any punishment, or be liable in damages by reason of his official acts or neglects, unless they are unreasonable, corrupt, or willfully oppressive; but the neglect to prepare the list of voters; to deposit it in the town clerk's office; to post it, as required herein; to call town meetings for elections; to cause returns of votes, or copies thereof to be delivered into the office of the secretary of state, as required by the constitution and laws; or to make the records by law required, shall be deemed willful and unreasonable, unless the contrary is shown. R. S. c. 6, § 91.

CHAPTER XXVII.

POLITICAL CAUCUSES.

No person shall take part or vote in any caucus of any political party unless qualified therefor by enrollment as hereinafter provided. R. S. c. 6, § 101.

Any person who is a legal voter may enroll himself as a member of any political party by filing with the clerk of the town of

which he is a legal voter a declaration in writing, signed by him, substantially as follows:

I, —, being a legal voter of —, hereby elect to be enrolled as a member of the — party. The following statement of name, residence, place of last enrollment if any, and party of last enrollment if any, is true.

A new enrollment may be made at any time, but the person making such new enrollment shall not vote in any political caucus within six months thereafter if he designates a different political party from that named by him in the preceding enrollment. R. S. c. 6, § 102.

The clerk of the town where the enrollment is made, as above provided, shall receive and file the same, indorsing thereon the date of filing, and shall record the name, residence, place of last enrollment and date of filing, in a separate book for the enrollment of members of each political party, entering the names alphabetically. Suitable blanks for such enrollment shall be provided by the town clerks and in addition thereto they shall provide books with proper headings, embodying the enrollment statements above provided, which the person desiring to enroll may fill out and sign, thereby enrolling himself with the same effect as by filing such enrollment paper. Such books shall be public records and shall at all times be open to public inspection. Any voter not previously enrolled may enroll as aforesaid up to the day of holding any caucus and may enroll himself during said caucus by subscribing and making oath to the following statement before the chairman of the caucus.

I, —, do solemnly swear that I am a qualified voter in this town, or ward, and have the legal right to vote in the caucus of the — party. I am a member of that political party and intend to vote for its candidates at the election next ensuing. I have not taken part or voted at the caucus of any other political party in the six months last past.

The secretary of the caucus shall indorse thereon whether the person subscribing and swearing to the same voted in said caucus, and within one week thereafter the secretary shall return said statement with the indorsement thereon to the clerk of the town wherein such caucus is held, and said clerk shall thereupon enroll said voter in the enrollment list of the party designated by him. Said statement shall be preserved as public records and shall be prima facie evidence in any court that said person took said oath and voted in said caucus. R. S. c. 6, § 103.

Caucuses and meetings of political parties held for the purpose of nominating candidates or choosing delegates to assemble in

convention to nominate any person to any public office whose name shall be placed on the final ballot, unless held under the provisions of sections one hundred and one to one hundred and twelve inclusive are hereby declared to be unlawful, and no political party shall have its political ticket placed on the final ballot unless the nominations of its candidates are made in accordance with the provisions of said sections, *provided* that this shall not be construed as preventing citizens' caucuses. R. S. c. 6, § 104.

All votes for the election of delegates to any political convention for the nomination of a candidate for any public office shall be by ballot, written or printed, on plain paper. R. S. c. 6, § 105.

No person shall vote or offer to vote more than once for any candidate or delegate or set of delegates in any one caucus, nor shall he vote or offer to vote in any one caucus held in any caucus district in which he shall not at the same time be a legal voter. No person shall vote or offer to vote in any caucus where candidates or delegates are to be chosen, if he has already voted at the caucus of any other political party in the past six months. R. S. c. 6, § 106.

No person whose right to vote is challenged shall be allowed to vote until he shall have taken the following oath, which shall be administered by the chairman of the caucus: "You do solemnly swear that you are a qualified voter in this town or ward, and have the legal right to vote in this caucus; that you are a member of the political party holding the same and intend to vote for its candidates at the election next ensuing, and that you have not taken part or voted at the caucus of any other political party in the six months last past." The secretary of the caucus shall make a record of the administration of such oath, as provided in section one hundred and three and with the same effect. R. S. c. 6, § 107.

Notices of caucuses, signed by the chairman and secretary, or by a majority of the committee, shall be issued by each town committee not less than seven days prior to the day on which the caucuses are to be held. They shall be conspicuously posted in at least five places on the highways of each voting precinct, and shall state the place, day and hour of holding such caucuses. In case voting is by check list a sufficient time shall be allowed for all to vote, and the call for the caucus shall state the hours

fixed by the committee for the opening and closing of the polls. R. S. c. 6, § 108.

No person shall pay or offer to pay to any voter any pecuniary compensation for the vote of such voter, or to influence his action at any caucus held under the provisions of the eight preceding sections. R. S. c. 6, § 109.

Voting lists as used in the election next preceding any caucus, shall be used as check lists, at such caucuses, if the town committee shall so determine and provide in the call, and such committee shall be required to provide for the use of such list upon written request, filed with the chairman or clerk of the committee, at any time before the call is posted, of voters of the party, to the number of not less than twenty in towns of two thousand and not exceeding five thousand inhabitants; and of not less than fifty in towns of five thousand or more inhabitants, according to the last official census of the United States. The officials having charge of such voting lists shall furnish certified copies thereof for use in caucuses, upon application of such party committee, the expense thereof to be paid as other expenses of registration are now paid. No person shall be deprived of his right to vote in such caucus by reason of the fact that his name does not appear on such lists if he shall have become a legally qualified voter of such precinct subsequent to the last election, and shall be otherwise qualified to vote as provided in the nine preceding sections. R. S. c. 6, § 110.

Whoever violates any provision of the ten preceding sections, or refuses to perform any duty required thereunder, or willfully makes a false statement of fact in his declaration of enrollment, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months. R. S. c. 6, § 111.

The provisions of the eleven preceding sections shall not apply to towns of less than two thousand inhabitants, nor to cities of more than thirty-five thousand inhabitants, nor to cities wherein the calling and holding of caucuses, is regulated by special law until such special law is repealed. R. S. c. 6, § 112.

Whoever, by rude or indecent behavior, or in any way willfully or unlawfully disturbs or interrupts any public primary political meeting or caucus or public convention, lawfully assembled in any hall or other place of meeting, for the purpose of nominating, or proposing candidates for any public office, or for the choice of delegates to conventions or other meetings called for such purpose, or creates a disturbance in any hall, walk or

corridor adjacent or leading to the room where such caucus or convention is held, shall be punished by imprisonment for not more than thirty days, or by fine of not less than five, nor more than ten dollars. R. S. c. 6, § 113.

Whoever, not being a voter in the ward, to voters of which such meeting or caucus by the call therefor is limited, or whoever, being a voter in such ward, but not included in the description of those persons invited to such meeting or caucus by the call therefor, shall vote, or attempt to vote, or otherwise willfully or unlawfully participate in such meeting or caucus, or whoever shall willfully and knowingly give in, or attempt to give in, more than one vote or ballot upon any question submitted to said meeting or caucus, or in any balloting that may be taken therein, shall be punished by imprisonment for not more than thirty days, or by fine of not less than five, nor more than ten dollars. R. S. c. 6, § 114.

Any officer of any such caucus or of any public convention so assembled for the purpose aforesaid, or any person selected thereby or under the authority thereof, or any person assuming to act therein for the purpose of ascertaining or declaring the result of any vote or balloting that may there be had, who shall willfully and knowingly prevent any person from voting therein, having a right under the law and the terms of the call for such meeting so to do, or who shall willfully authorize or permit any person to vote therein, not entitled by law or the terms of the call to participate in such meeting, or who shall knowingly and willfully receive from any person more than one vote upon any question or in any single balloting therein, or who shall participate in, or willfully and knowingly permit any false counting or declaring of any vote or balloting in said meeting, shall for such offense be punished by imprisonment for not more than thirty days or by fine of not less than ten, nor more than twenty dollars. R. S. c. 6, § 115.

The city committee may in their discretion determine in their call for a caucus or convention whenever the right of any person to vote in any such primary meeting or caucus or convention, is challenged for reasonable cause by three or more persons present in such meeting, of whose right to participate therein the presiding officer has no doubt, such challenged person shall not vote unless the presiding officer shall, notwithstanding such challenge, be satisfied of his right and shall authorize him so to do, until all present, whose right to vote in such meeting is

unchallenged, have had an opportunity to vote ; after which, and prior to the declaration of such vote, the question of the right of any person or persons so challenged to vote, shall be submitted by the presiding officer to such meeting, and the challenged vote or votes shall then be received, if such meeting shall so determine, and not otherwise. And if any person whose right to vote in such meeting has been thus challenged, shall, after such challenge and prior to such determination of his right so to do, vote upon the question of receiving his own vote or upon any other question in said meeting or caucus, he shall be punished as prescribed in the preceding section. R. S. c. 6, § 116.

The provisions of the four preceding sections shall be applicable only to cities of more than thirty-five thousand inhabitants. R. S. c. 6, § 117.

CHAPTER XXVIII.

THE QUALIFICATION AND REGISTRATION OF VOTERS.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. R. S. c. 5, § 1.

Every male citizen who had the right to vote on the fourth day of January, eighteen hundred and ninety-three, together with those who were sixty years of age and upwards on said day, and every other male citizen, excepting paupers, persons under guardianship, and Indians not taxed, who, not being prevented by physical disability from so doing, is able to read the constitution of the state in the English language, in such manner as to show that he is neither prompted nor reciting from memory, and to write his name, and who is twenty-one years of age or upwards, and shall have his residence established in this state for the term of three months next preceding any national, state, city or town election, shall have the right to vote at every such election in the city, town or plantation where his residence is so established, *provided, however,* that his name has been

properly entered upon the voting list of such city, town or plantation. R. S. c. 5, § 2.

Any applicant for registration as a voter, claiming exemption from the educational test recited in the preceding section, except those exempted by the provisions of said section, shall declare under oath, that he was a legal voter in this state on the fourth day of January, eighteen hundred and ninety-three, and, if required so to do, shall furnish such other reasonable evidence of the truthfulness of his statement as may be satisfactory to the officers whose duty it is to prepare voting lists. R. S. c. 5, § 3.

Every person whose name has not been entered upon the voting lists in any city in accordance with the provisions hereof, must, if he desires to vote, appear in person at a place provided for registration and prove that he possesses all the qualifications of a voter. Every person qualified to vote, as hereinbefore provided, shall vote only in the ward of the city, and voting precinct thereof, if any, in which he had his residence on the first day of April preceding, or of his becoming an inhabitant after said day. R. S. c. 5, § 4.

In each city of the state having four thousand or more inhabitants, a board of registration appointed as provided in the following section shall have exclusive power and authority to make up, correct and revise the list of voters in each of said cities. In all cities having less than four thousand inhabitants, the municipal officers shall make such list, exercising the same powers and being governed by the same laws as municipal officers of towns having five hundred or more registered voters. R. S. c. 5, § 5.

Such board shall consist of three members who shall be residents and legal voters of the city where such board is established; they shall not hold or be eligible to any state, county or city office however elected or appointed thereto so long as they shall continue members of said board. One member of said board shall be appointed and commissioned by the governor, by and with the consent of the council, for the term of four years. The other two members of the board shall be chosen one from the political party polling the highest number of votes for governor at the next preceding state election, and one from the political party polling the next highest number of votes for governor at said election; they shall each hold their office for the term of three years; each shall be nominated by the city com-

mittee of his own political party, and upon due notice thereof in writing, the several mayors of said cities shall forthwith appoint such persons, so nominated, members of said board. If either or both of said political parties, refuses or neglects to seasonably nominate a member of such board and to notify the mayor of such city, said mayor shall thereupon select and appoint a member of said board from the political party so neglecting and refusing to nominate, and said mayor shall so appoint in all such cases of vacancy, whether caused by death, resignation, declination, neglect or refusal to act after being so appointed, or by election or appointment to any state, county or city office, or however such vacancy may be caused; but in cases of necessity arising from the exigency of the public business, the other two members may proceed therewith as provided by this chapter until such vacancy shall be filled in the manner provided herein. And if any member of said board be absent or disqualified by sickness or otherwise, such mayor shall upon notice thereof forthwith fill his place by the appointment of some qualified elector of said city of the same political party as the absent member represents, to act in his absence. R. S. c. 5, § 6.

The person appointed and commissioned by the governor shall preside at all meetings of the board, but shall not vote therein except in case of a tie. He shall give notice of the time and place of the sessions of the board and sign all orders and processes issued by the same. If he is necessarily absent or disqualified by sickness or otherwise during any session of said board, the mayor of said city shall upon notice thereof, immediately appoint a qualified elector of the city, who shall be of the same political party as said chairman, to act in his absence. R. S. c. 5, § 7.

Said board shall have the exclusive power and authority to hear evidence and determine the qualification of voters in the city in which it is established. The presiding officer, at the request of any member shall cause any party or witness appearing before the board to be sworn; any member of the board may administer oaths; and the board shall have power to compel the attendance of witnesses; to punish for contempt; and to issue all processes necessary to the performance of the duties of the board. R. S. c. 5, § 8.

The assessors of any city, by one or more of their number or by one or more assistant assessors, shall in the months of April

and May in each year, visit every building in their respective cities and make true lists containing as near as can be ascertained from any owner or occupant thereof, the name, age, occupation and residence on the first day of April in the current, and his occupation and residence on the first day of April in the preceding year, or of his becoming an inhabitant after said last named day, of every male person twenty-one years of age and upwards, residing therein and liable to be assessed for a poll tax; and shall ascertain if any such person has within the year next preceding the first day of April of the current year moved from said building out of said city and taken up his residence elsewhere, and shall make diligent inquiries and true record concerning all matters required of them in this section. They shall make correction of any error in the name or place of residence of a person assessed, on his personal application therefor, and on proof of the same, shall make proper correction thereof on their books. R. S. c. 5, § 9.

The assessors shall promptly on or before the first day of July in each year, transmit to the boards of registration, the lists so made, or certified copies thereof, noting therein every change of name or residence of persons assessed a poll tax by them, and on or before said first day of July in each year, shall prepare street lists containing the name of every person assessed by them, or who has moved out of said city. Such lists shall be arranged by wards or voting precincts, if any. They shall prepare a copy of said street lists and deliver the same to their respective boards of registration on or before the fifteenth of said July. R. S. c. 5, § 10.

The assessors shall, in said street lists, arrange all buildings used as residences in the order in which they stand on the street or other place, by giving their number or other definite description; so that each building can be readily identified, and shall place opposite or under each number, as near as can be ascertained, the name, age, occupation and place of occupation of every person residing in said building on the first day of April of the current year and assessed a poll tax, with his residence on the first day of April of the preceding year or on the day of his becoming an inhabitant after said last named day. And said board of registration shall enter on the voting lists the name of every person assessed a poll tax for the current year, as transmitted to them by the assessors, *provided*, every such name can be identified as having been borne upon the voting lists of the last preceding election. Each board of registration shall promptly

transmit to the assessors of its city, notice of any error in the name or residence of a person assessed, together with the name and residence of every male citizen who shall prove for the purposes of registration that he was a resident of the city on the first day of April of said current year, but whose name does not appear on the list transmitted to said board by said assessors. R. S. c. 5, § 11.

Any assessor or assistant assessor, who shall knowingly or willfully enter or cause to be entered on any list of assessed polls, the name of any person as a resident of any building, who is not a resident thereof, shall for each such offense be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding one year. R. S. c. 5, § 12.

Any inmate of a building liable to be assessed for a poll tax, who shall refuse or neglect to give his true name when inquired thereof by any assessor or assistant assessor, and any owner or occupant of a building who shall refuse or neglect to give full and true information within his knowledge relating to all persons residing in such buildings when inquired thereof by any assessor or assistant assessor, or who shall knowingly or willfully give to an assessor or assistant assessor for the purpose of the assessment of a poll tax, the name of any person as a resident of a building, who is not a resident therein, shall be punished for each offense by fine not exceeding one hundred dollars or by imprisonment not exceeding six months. R. S. c. 5, § 13.

Boards of registration shall keep a general register of voters containing the names and records of all voters entered from year to year on the voting lists under the provisions of this chapter, giving the full Christian name and the surname, or the full name or initial or initials of any other name or names he may have, date of registration, residence on the first day of April of the year of registration or on the day of his becoming an inhabitant after said first day of April, age, place of birth, occupation, place of occupation, how long resident of the city, place of casting his last vote, married or single, residence of wife or family, where naturalized, when naturalized, in what court, arranged under the following heads. When registered,

; name,	; residence, street and number,	;
residence April first,	street and number,	; place of birth,
; age,	; date of birth,	; occupation,
place of business,	; how long a resident of city,	;
where last vote was cast,	; married or single,	; res-

idence of wife or family, ; where naturalized, ;
when naturalized, ; by what court, ; remarks. R.
S. c. 5, § 14.

Applicants under examination for registration shall be required, unless prevented by physical disability from so doing, or unless he had the right to vote, on the fourth day of January, eighteen hundred and ninety-three, or unless he was sixty years of age and upwards on said day, to read in the English language other than the title, so much as may be necessary, from an official edition of the constitution, in such manner as to show that he is neither prompted nor reciting from memory, and to write his name in a book kept for the purpose. The name of the applicant if admitted to registration, shall be announced in a clear, audible and distinct voice before entering his name on the register. R. S. c. 5, § 15.

In making examination of an applicant, who is a naturalized citizen, he shall be required to produce for inspection his papers of naturalization, or a certificate of the same from the court where he was naturalized, and to make oath that he is the identical person mentioned therein, and said board if satisfied that he has been legally naturalized, shall make a record or memorandum upon said paper of the date of such inspection and enter it upon the general register, and also, in a book kept for that purpose, the name and location of the court by which said papers were issued, with the date thereof and the date of said inspection, together with the name of said applicant as it is spelled and recorded in said papers, which need not again be produced before said board for examination after they had once been passed upon and the above minutes thereof recorded on the papers and in the general register. R. S. c. 5, § 16.

All meetings of said board of registration shall be open and public, and shall close on each day at nine o'clock in the afternoon, except as hereinafter provided. A record shall be kept of all names added to or stricken from the voting lists and of all other proceedings of said board. No name shall be added to or stricken from said voting lists except during the open sessions of said boards. R. S. c. 5, § 17.

Said boards of registration shall prepare ward lists of voters of such persons as appear to them to be legally qualified voters, at least thirty days before any election to be held for any purpose, by placing upon such lists all the names which appear upon the

voting lists for the last preceding election, except the names of such persons as have died or ceased to reside therein, or shall appear to said board to have otherwise become disqualified to vote therein since said preceding election, but no new name shall be added during such preparation; nor any other correction or revision of said list, except the correction of errors discovered to have been of the board's own making. And a certified copy of all such lists made in accordance with this section, shall be furnished to the clerk of such city by said board at least thirty days prior to any such election, and said clerk shall post said certified copies of said lists of voters in their respective wards, at or near the several voting places, customarily used as such in said cities, at least twenty-seven days prior to any such election, *provided, however*, that in case of a failure to elect any municipal officer at any election, or any person elected declines to serve, so that a special election is held to fill the vacancy, or in case of a special election to choose representatives to congress or members of the legislature, the board shall not be required to prepare, or the city clerk to post a new list of voters, and for this purpose said board shall be in session the three secular days next preceding said election, the first two thereof to be devoted to registration of voters, and the last of said secular days to enable the board to verify the correctness of said lists and to complete and close up its records of said sessions. R. S. c. 5, § 18.

Said board of registration shall be in session from nine in the forenoon to one o'clock in the afternoon, and from three to five o'clock in the afternoon and from seven to nine o'clock in the afternoon, in cities of not less than nineteen thousand inhabitants, on each of the twelve secular days next prior to any election; on the first nine of said secular days, to receive evidence touching the qualifications of voters therein, and to revise and correct the voting lists, and on the latter three of said secular days, to enable the board to verify the correctness of said lists and to complete and close up its records of said sessions. And in all other cities, for the same purpose, and at the same hours on each of the five secular days next prior to any election, the first four thereof to be devoted to registration as above, and the last one of said secular days to enable the board to verify the correctness of said lists and to complete and close up its records of said sessions. And on the last of said secular days, at five o'clock in the afternoon, certified copies of said voting lists shall be delivered to the clerks of said cities and receipts

taken therefor, except that on the last of said days devoted to registration and on the last of said days devoted to the records as above, the sessions of the board shall close at five o'clock in the afternoon, but no name shall be added to or stricken from said lists after five o'clock in the afternoon of the last of said days devoted to registration as above. Said board shall not place upon said lists during said revision of the same, the name of any person who shall not personally appear before said board and request it, and during said time said board shall revise and correct the voting lists. Nothing in this chapter shall be so construed as to require any voter, whose name is already upon any ward list and who afterwards moves from said ward to any other ward in said city, to appear personally before said board during the revision of the list in order to transfer his name from one ward list to another. The wardens of cities shall be governed by said revised and corrected lists; and no names shall be added to or stricken from said lists on the day of election, and no person shall vote at any election whose name is not on said lists. No board of registration shall be answerable for any omission of a name or residence from the voting lists or for any error in the same, unless such name and residence are correctly entered in the general register of voters; but on the day of election said board shall be in session, and shall give to any registered voter whose name has been omitted from the voting list, or in whose name or residence as placed on said voting list a clerical error has been made, a certificate signed by a majority of the board, giving the corrected name and residence of such person, and directed to the officer presiding over the election; such officer shall on receipt of such certificate, allow the person therein named to vote and shall check his name on the certificate, and securely attach the certificate to the voting list. R. S. c. 5, § 19.

When the right of any person to have his name placed upon such list is challenged by any qualified elector, or when the right of any person to have his name remain upon such list is so challenged, before said board shall add to or strike from said list the name of any such person, they shall issue a notice and summons to said person so challenged and allow him a reasonable opportunity to be heard. Such notice and summons shall be served upon such person by an officer selected by the board, by giving him in hand or by leaving at his last and usual place of abode, an attested copy of said notice and summons, at least six hours before the closing of the final session of the board devoted

to the revision and correction of the voting lists. Said person and said board may also summon and examine other witnesses before said board concerning his right to vote, and if it appears to said board that such person is not or will not be qualified to vote at such election, they shall cause his name to be erased from said list and not add it thereto. And the list of voters in cities made under this chapter shall state the street, and so far as practicable, the number of the street where each voter resides. The residence of a voter as stated upon the list of voters used at the last preceding election, shall be deemed his last and usual place of abode, unless he shall have given notice in writing, over his own signature, or in person to the city clerk of a change of his residence, which notice, if given after the first day of April, shall entitle him to have his residence so corrected on the voting list to be used at the next subsequent election, but shall not entitle him to have his registration otherwise changed nor to vote in ward or precinct other than that in which he resided on said first day of April. Said clerk shall keep a record of all notices of change of residence, which record shall at all times be open to public inspection. R. S. c. 5, § 20.

The clerks of cities shall be custodians of the records of said boards and of the revised and corrected lists of voters prepared by said boards for use at any election, and shall seasonably transmit to the wardens of cities a true and attested copy of such lists for their use on election day; and said clerks shall keep said lists one year and furnish certified copies thereof on application of any person and payment therefor, within ten days thereafter; for failure so to do they shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year. The wardens and ballot clerks shall certify on said voting lists that they are the lists used by them respectively at said elections. R. S. c. 5, § 21.

The president of such board shall receive five dollars for each day that the board shall be in session for the revision and correction of the voting lists and for completing the records thereof, and the other two members of said boards shall receive four dollars a day for such time. They shall also receive compensation not exceeding five dollars a day, to be fixed by the city council for such time as they are necessarily employed in making up and preparing such lists of voters, together with reasonable and necessary expenses including blank books, stationery and the necessary assistance of clerks, all of which shall be paid by the city

where such board is established, and each of said cities shall provide a suitable place for holding the sessions of said board, and pay for the services of such officers as said board may employ and have in attendance to preserve order and execute its precepts. All witness fees shall be paid at the established rates of fees before municipal courts. R. S. c. 5, § 22.

Notices of the time and place of the sessions of such board to revise and correct said voting lists, shall be given by the president thereof and posted by the clerks of said cities at the same time and place as are the certified copies of the lists of voters; and the voting lists as revised and corrected by said board of registration shall be used at each election held in said cities in the several wards thereof. R. S. c. 5, § 23.

Any qualified elector in said cities may challenge the right of any person to vote in any ward of said cities at any election held therein and shall be given the opportunity by the presiding officer thereof, to make such challenge, and such presiding officer shall note the fact of such challenge upon the voting list used in such ward. R. S. c. 5, § 24.

All notices of said boards, assessors, city clerks or of any other public officer relating to registration of voters or to elections, shall be posted at or as near as may be to the places designated for receiving votes on election days. R. S. c. 5, § 25.

The clerk or register of deaths of each city shall, at least thirty-three days before each election, and on the first day designated by said boards for the revision and correction of the voting lists and also on the last of said days set apart for such revision and correction, transmit to said boards, a certified list of the names of all male persons over twenty-one years of age deceased since the preceding election, or since the date of the preceding list, with the ward, street and number where such person resided at the date of death. R. S. c. 5, § 26.

The board or officer in charge of the police force of any city shall, upon request so to do, by said boards detail a sufficient number of police officers to attend any meeting held by said boards and preserve order and enforce the orders of said boards. R. S. c. 5, § 27.

Any member of said boards who shall refuse or willfully neglect to require any applicant for registration to whom the same is applicable, to read a portion satisfactorily to a majority of said board, other than the title, from some official edition of the con-

stitution, in such manner as to show that he is neither prompted nor reciting from memory, or to require such applicant to write his name in a book kept for the purpose, unless he is prevented by physical disability from so doing, or who knowingly shall prevent or seek to prevent the registration of any legal voter, or who knowingly shall register the name of any person not qualified to vote or who shall be guilty of any fraud or corrupt conduct in the execution of the duties of his office, shall for each offense be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding two years. R. S. c. 5, § 28.

Any city officer who shall willfully neglect or refuse to perform any duty required of him by law in matters relating to the registration of voters, shall for each offense be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding two years. R. S. c. 5, § 29.

Whoever causes his name to be placed upon the list of voters of more than one ward in any city for the same election, or causes any such act, or aids or abets any person in such act, shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding one year. R. S. c. 5, § 30.

Whoever knowingly or willfully makes a false affidavit, or takes a false oath, or signs a false certificate regarding the qualification of any person for the assessment of a tax or for registration, or injures or defaces any list of voters or any notice relating to the registration of voters in any city, or prevents or interferes with, or aids or abets any person in preventing or interfering with any public officer in the discharge of his duty relating to the registration of voters, shall for each offense be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding one year. R. S. c. 5, § 31.

Whoever causes his name to be registered knowing that he is not a qualified voter in the place where so registered, or falsely represents or attempts to represent himself as another person before any board of registration, or gives a false answer to said board concerning any matter relating to the registration of a voter, or the right of any person to vote, or aids or abets any other person in doing either of the acts above mentioned, shall for each offense be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding one year. R. S. c. 5, § 32.

Whoever refuses to obey the lawful orders or directions of any board of registration, or interrupts or obstructs the proceed-

ings at any meeting for registration, shall be arrested, detained in custody until a warrant can be procured and shall for each offense be punished by a fine not exceeding fifty dollars or imprisonment not exceeding sixty days. R. S. c. 5, § 33.

In every town, where the selectmen are not assessors, the assessors on or before the first day of August in each year in which an election of governor, senators and representatives is held, shall prepare a list of the persons whom they judge to be constitutionally qualified to vote therein at such election and deliver it to the selectmen. R. S. c. 5, § 34.

The selectmen of every town, on or before the eleventh day of August in every such year, shall prepare a corrected list of persons so qualified. R. S. c. 5, § 35.

In every town, having by the census of the United States, then last taken, more than three thousand inhabitants, the selectmen shall be in open session to receive evidence of the qualifications of persons claiming the right to vote at any such election, and for the correction of said list, for a reasonable time, on not more than two days, between the eleventh and eighteenth days of August in every such year, giving previous notice of the time and place of each session, as their town meetings are notified. R. S. c. 5, § 36.

On or before the twentieth day of August in every such year, the selectmen shall deposit in the office of the town clerk, an alphabetical list of voters thus prepared and revised, and post a similar list in one or more public places in the town. R. S. c. 5, § 37.

After such lists are thus prepared, deposited with the clerk, and posted, the selectmen shall not add thereto, nor strike therefrom, the name of any person, except in open session on one of the days prescribed by law for receiving evidence of the qualifications of voters; nor shall they strike from said list the name of any person residing in the town, without notice first given to him that his right to vote is questioned, and an opportunity for a hearing on one of such days. But at any regular session for receiving such evidence, the selectmen shall place on the list of voters, the name of every person known by, or proved to them to be so qualified, whether he applies therefor or not. R. S. c. 5, § 38.

When a person of foreign birth exhibits to the selectmen of his town papers of naturalization, issued to him in due form by a court having jurisdiction, they shall, if satisfied of their genu-

iness, and that such person is entitled to vote, approve such papers by a written indorsement thereon, with the date thereof, signed by one of them; register in a book kept for that purpose the name of the person, the date of the papers, the date of approval, and the name of the court by which they were issued; cause the name of such person to be entered on the list of voters; and continue his name on the successive lists so long as he continues to reside there and is in other respects qualified to vote. If they are of opinion, that such papers are not genuine, or were not issued to the person presenting them, or that he is not for other cause a voter, they shall not approve them or perform the other acts required; but he shall not, by their refusal to approve his papers, or to enter his name, be deprived of his right to vote, upon satisfactory proof. R. S. c. 5, § 39.

In all towns, cities not included, having five hundred or more registered voters, and in all cities having less than four thousand inhabitants, the municipal officers shall receive applications of persons claiming a right to vote, on the three secular days next preceding the day of election, and no application shall be received after the hour of five in the afternoon on the secular day next preceding the day of election; and no names shall be added to the list of voters on the day of election, by certificate or otherwise, except such as were upon the list used at the last preceding election, and have been inadvertently omitted by the selectmen; and on that day no change shall be made in names except to correct clerical errors therein. R. S. c. 5, § 40.

In every town containing less than five hundred voters, the municipal officers shall be in session on the day of any such election to receive and decide on such applications, at some convenient place, for so long a time immediately preceding the opening of the polls as they think necessary, and shall hear and determine any such application at any time before the polls are closed. R. S. c. 5, § 41.

The municipal officers shall order notice of the time and place of all their sessions required or authorized in the two preceding sections, to be given in the warrant for calling the meetings for such elections. R. S. c. 5, § 42.

The selectmen shall make a correct alphabetical list of the inhabitants in their towns qualified to vote in the choice of town officers, and deposit it in the office of the town clerk, and post a copy thereof in one or more public places in such town, on or before the twentieth day of February, annually. R. S. c. 5, § 43.

They shall be in session at some convenient time and place to be by them notified in the warrant for calling the meeting in such town, on the secular day next preceding the annual election in March, or on the morning of the day of election, to hear and decide upon the applications of persons claiming to have their names entered upon said list; and such session, when held on a secular day preceding the election, shall continue at least three hours, and when held on the day of election, shall continue until the election of town officers required by law to be elected by ballot, has been completed. R. S. c. 5, § 44.

The town clerk shall have the list of voters provided for by the two preceding sections, at every town meeting held for the choice of town officers required by law to be chosen by ballot, and it shall be kept and used as a check list at the polls by said clerk or moderator at such meeting, in the manner prescribed for selectmen or assessors by section forty-one of chapter six; if demanded by one-third of the voters present. R. S. c. 5, § 45.

If the town clerk or moderator presiding at such meeting willfully neglects or refuses to comply with the preceding section, he forfeits not less than fifty, nor more than one hundred dollars, to be recovered in an action of debt in the name and for the use of the town, to be prosecuted by the treasurer at the request of any voter therein. R. S. c. 5, § 46.

CHAPTER XXIX.

AUSTRALIAN BALLOT LAW.

All ballots cast in elections for national, state, district and county officers in cities, towns and plantations, and all ballots cast in municipal elections in cities, shall be printed and distributed at public expense as hereinafter provided. The printing of the ballots and cards of instructions to voters, shall in municipal elections in cities be paid for by the several cities respectively, and in all other elections the printing of the ballots and cards of instructions, and the delivery of them to the several cities and towns, shall be paid for by the state. The distribu-

tion of the ballots to the voters shall be paid for by the cities, towns and plantations respectively. R. S. c. 6, § 1.

The term state election, as used in this act, shall apply to any election held for the choice of a national, state, district or county officer, whether for a full term or for the filling of a vacancy, and the term state officer shall apply to any person to be chosen by the qualified voters at such an election. The term city election shall apply to any municipal election so held in a city, and the term city officer shall apply to any person to be chosen by the qualified voters at such an election. Ib.

Any convention of delegates, and any caucus or meeting of qualified voters, as hereinafter defined, and individual voters to the number and in the manner hereinafter specified, may nominate candidates for public office, whose names shall be placed upon the ballots to be furnished as herein provided. R. S. c. 6, § 2.

Any convention of delegates representing a political party which, at the gubernatorial election next preceding, polled at least one per cent of the entire vote cast in the state for governor, or in the electoral district or division thereof for which the nomination is made, and any caucus held by such a political party in any such electoral district or division, may for the state, or for the district or division for which the convention or caucus is held, as the case may be, by causing a certificate of nomination to be duly filed, make one such nomination for each office therein to be filled at the election. Every such certificate of nomination shall state such facts as may be required as above for its acceptance, and as are required in section five of this chapter; shall be signed by the presiding officer or by the secretary of the convention or caucus; and shall be sworn by the party signing, to be true, and a certificate of the oath shall be annexed to or made on the certificate of nomination. R. S. c. 6, § 3.

Nominations of candidates for any offices to be filled by the voters of the state at large, may be made by nomination papers signed in the aggregate for each candidate by not less than one thousand qualified voters of the state. Nominations of candidates for electoral districts or divisions of the state, or for municipal or ward officers, may be made by nomination papers signed in the aggregate for each candidate, by qualified voters of such district or division not less in number than one for every one hundred persons who voted at the next preceding gubernatorial election in such district or division, but in no case less than twenty-five. In the case of a first election to be held in a

plantation, town or ward newly established, the number of twenty-five shall be sufficient for the nomination of a candidate who is to be voted for only in such plantation, town or ward; and in the case of a first election in a district or division newly established, other than a plantation, town or ward, the number of twenty-five shall be sufficient. Each voter signing a nomination paper shall make his signature in person, and add to it his place of residence, and each voter may subscribe to one nomination for each office to be filled, and no more. The nomination papers shall before being filed, be respectively submitted to the clerks of the cities, towns or plantations in which the signers purport to be qualified voters, and each clerk to whom the same is submitted shall forthwith certify thereon what number of the signatures are names of qualified voters both in the city, town or plantation for which he is clerk and in the district or division for which the nomination is made; one of the signers to each such separate paper shall swear to the truth thereof, and the certificate of such oath shall be annexed to or made upon the nomination papers. R. S. c. 6, § 4.

All certificates of nomination and nomination papers shall, besides containing the names of candidates, specify as to each, first, the office for which he is nominated; second, the party or political principle which he represents, expressed in not more than three words; third, his place of residence. In the case of electors of president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political appellation. R. S. c. 6, § 5.

Certificates of nomination and nomination papers for the nomination of candidates for state and county officers and representatives to the legislature, shall be filed with the secretary of state on or before the tenth day of August of each year in which such election is held, and for candidates for electors of president and vice-president on or before the tenth day of October in each year when such election is held. Such certificates and papers for the nomination of candidates for the offices of mayor and all other offices in cities shall be filed with the city clerks of the respective cities at least seven days, exclusive of Sundays, previous to the day of such election. Such certificates and papers for the nomination of candidates to be voted for at any special election to be held for choice of representatives to congress or members of the legislature shall be filed with the secretary of state at least seven days, exclusive of Sundays, previous to the day of election. With nomination papers and certificates shall

also be filed the consent in writing of the person nominated. R. S. c. 6, § 6.

The certificates of nomination and nomination papers being filed, and being in apparent conformity with the provisions hereof, shall be deemed to be valid; and if not in apparent conformity, they may be seasonably amended under oath. R. S. c. 6, § 7.

In case a candidate who has been duly nominated under the provisions hereof shall die before the day of election, or shall withdraw in writing, the vacancy may be supplied by the political party or other persons making the original nomination, in the manner herein provided for such nomination; or, if the time is insufficient therefor, then the vacancy may be supplied, if the nomination was made by a convention or caucus in such manner as the convention or caucus has previously provided for the purpose, or in case of no such previous provision, then by a regularly elected general or executive committee representing the political party or persons holding such convention or caucus. The certificates of nomination made for supplying such vacancy, shall state, in addition to the other facts required by this chapter the name of the original nominee, the facts causing the vacancy, and the measures taken in accordance with the above requirements for filling the vacancy; said certificate shall be accompanied by the withdrawal, if any, and shall be signed and sworn to by the presiding officer or secretary of the convention or caucus, or by the chairman or secretary of the duly authorized committee, as the case may be. The name so supplied for the vacancy shall, if the ballots have not been printed for the office already, be placed on the ballots, instead of the original nomination; or, if the ballots have been printed, new ballots containing the new nomination shall, whenever practicable, be furnished, or, slips containing the new nomination shall be printed under the direction of the secretary of state, which may be pasted in proper place upon the ballots and thereafter shall become part and parcel of said ballots as if originally printed thereon. R. S. c. 6, § 8.

All certificates of nomination and nomination papers when filed shall forthwith be opened and kept open under proper regulations to public inspection, and the secretary of state and the several city clerks shall preserve the same in their respective offices not less than one year. R. S. c. 6, § 9.

Every general ballot, or ballot intended for the use of all voters, which shall be printed in accordance with the provisions

of this chapter, shall contain the names and residences, ward residences in city elections, of all candidates whose nominations for any office specified in the ballot have been duly made and not withdrawn in accordance herewith, and the office for which they have been severally nominated and shall contain no other names except that in case of electors of president and vice-president of the United States the names of the candidates for president and vice-president may be added to the party or political designation. The names of candidates nominated by any party shall be grouped together upon the ballot. Above each group shall be placed the name of the political party by which the candidates comprising such group were placed in nomination, or by the political designation as described in the certificate of nomination, or nomination papers under a square. If only one person be nominated by any party, or under any political designation, his name with the office for which he is a candidate shall be printed by itself under the name of such party or political designation. A blank space shall be left after the name of the candidates for each different office in which the voter may insert the name of any person, for whom he desires to vote as candidate for such office. Whenever the approval of a constitutional amendment or other question is submitted to the vote of the people, such question or questions shall be printed upon a separate ballot. The ballots shall be so printed as to leave a blank space, above such amendment or question so as to give each voter a clear opportunity to designate by a cross mark (X) therein, his answers to the questions submitted and on the ballot may be printed such words as will aid the voter to do this as "yes," "no," and the like. The ballot shall be not less than four inches in width and not less than six inches in length. Before distribution the ballots shall be so folded in marked creases that their width and length when folded shall be uniform. On the back and outside, when folded, shall be printed "Official ballot for," followed by the designation of the polling place for which the ballot is prepared, the date of the election and a fac-simile of the signature of the secretary of state or city clerk who has caused the ballot to be printed. Except as otherwise herein provided, ballots shall be printed upon clean white paper without any distinguishing mark or figures thereon. R. S. c. 6, § 10.

All ballots when printed shall be folded as hereinbefore provided, and fastened together in convenient numbers in packages, books or blocks, in such manner that each ballot may be detached

and removed separately. A record of the number of ballots, printed and furnished to each polling place shall be kept and preserved by the secretary of state and the several city clerks for the term of one year. R. S. c. 6, § 11.

There shall be provided for each voting place, at which an election is to be held, two sets of such general ballots and two sets of ballots containing any constitutional amendment or other question submitted to the vote of the people, each of not less than sixty for every fifty and fraction of fifty votes cast in said voting place at the next preceding election, city, state or national, corresponding to the election for which said ballots are to be provided. R. S. c. 6, § 12.

The secretary of state in case of a state election, and the several city clerks, in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them, and the method of gaining assistance, and as to obtaining new ballots in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of sections twenty-nine, thirty, thirty-one and thirty-two of this chapter to be printed in large, clear type, on separate cards, to be called cards of instructions; and they shall respectively furnish the same and the ballots for use in each such election. They shall also cause to be printed on tinted paper, and without the fac-simile endorsements, ten or more copies of the form of the ballot provided for each voting place at each election therein, which shall be called specimen ballots, and shall be furnished with the other ballots provided for each such voting place. R. S. c. 6, § 13.

The secretary of state shall, seven days at least, previous to the day of any election of state or county officers, transmit to the clerks in each city, town and plantation in which such election is to be held, printed lists containing the names, residences and party or political appellations of all candidates nominated as herein provided for such election and to be voted for at each polling place in each such city, town and plantation respectively, substantially in the form of the general ballot to be so used therein; and the clerks shall immediately cause the lists for each plantation, town or ward, as the case may be, to be conspicuously posted in one or more public places in such plantation, town or ward. The secretary of state shall likewise cause to be published prior to the day of any such election, in at least two newspapers, if there be so many, printed or published in each county, representing, so far as practicable, the political par-

ties which, at the preceding election, cast the largest and next largest number of votes, a list of all the nominations made as herein provided and to be voted for in such county, so far as may be, in the form in which they shall appear upon the general ballots. New nominations made or authorized shall be transmitted, posted and published promptly, and so far as practicable in the manner herein directed, and communications transmitted as herein directed by the secretary of state to any clerk, shall be duplicated on the succeeding day. R. S. c. 6, § 14.

The city clerk of each city shall four days at least prior to the day of any city election therein, cause to be conspicuously posted in one or more public places in each ward of such city, a printed list containing the names, residences and party or political appellations of all candidates nominated as herein provided, and to be voted for in such ward, substantially in the form of the general ballot to be so used therein; and he shall likewise cause to be published, prior to the day of such election, in at least two newspapers, if there be so many, printed or published in such city, representing the political parties which cast at the preceding election the largest and next largest number of votes, a list of all the nominations made, as herein provided, and to be voted for in such city, so far as may be, in the form in which they shall appear upon the general ballots. R. S. c. 6, § 15.

The secretary of state shall send, separately and at different times or by different methods, the two sets of general and special ballots, together with the specimen ballots, and cards of instructions, printed by him, as herein provided, to the several city, town and plantation clerks, so as to be received by them, one set seventy-two hours at least previous to the day of election, and the other set forty-eight hours at least previous thereto. The same shall be sent in sealed packages, with marks on the outside clearly designating the polling place for which they are intended and the number of ballots of each kind enclosed; and the respective city, town and plantation clerks shall on delivery to them of such packages, return receipts therefor to the secretary. The secretary shall keep a record of the time when, and the manner in which the several packages are sent, and shall preserve for the period of one year the receipts of the city, town and plantation clerks. R. S. c. 6, § 16.

The two sets of ballots together with the specimen ballots and cards of instructions printed by the city clerks as herein provided, shall be packed by them in separate sealed packages, with marks

on the outside clearly designating the polling places for which they are intended, and the number of ballots of each kind enclosed. R. S. c. 6, § 17.

The several city, town and plantation clerks, or municipal officers, shall send to the presiding election officer or officers of such voting place before the opening of the polls on the day of election one set of ballots so prepared, sealed and marked for such voting place, and a receipt of such delivery shall be returned to them from the presiding election officer or officers present, which receipt, with a record of the number of ballots sent, shall be kept in the clerk's office for one year. At the opening of the polls in each polling place the seals of the packages shall be publicly broken, and the packages shall be opened by the presiding election officer or officers, and the packages, books or blocks of ballots shall be delivered to the ballot clerks hereinafter provided for. The cards of instruction shall be immediately posted at or in each voting shelf or compartment provided in accordance with this chapter for the marking of the ballots, and not less than three such cards and not less than five specimen ballots shall be immediately posted in or about the polling rooms outside the guard rails. The second set of ballots shall be retained by the respective city, town and plantation clerks until they are called for or needed for the purposes of voting, and upon the requisition in writing of the presiding election officer or officers of any voting place, the second set of ballots shall be furnished to such voting place in the manner above provided as to the first set. R. S. c. 6, § 18.

In case the ballots to be furnished to any city, town or plantation or voting place therein, in accordance with the provisions hereof, shall fail for any reason to be duly delivered, or in case after delivery they shall be destroyed, lost or stolen, it shall be the duty of the clerk or municipal officers of such city, town or plantation to cause other ballots to be prepared substantially in the form of the ballots so wanting and to be furnished; and upon receipt of other such ballots from him or them, accompanied by a statement under oath that the same have been so prepared and furnished by him, and that the original ballots have so failed to be received or have been so destroyed, lost or stolen, the election officers shall cause the ballots so substituted to be used in lieu of the ballots wanting as above. R. S. c. 6, § 19.

The municipal officers, sixty days before any election, may divide towns of more than four thousand inhabitants and wards of cities into convenient polling districts, which shall contain

not less than three hundred voters in each, defining the limits thereof by a writing under their hands to be filed with and recorded by the city or town clerks; and attested copies thereof shall forthwith be posted by said clerks in not less than six public and conspicuous places in said town or ward, and the same shall be published in one or more of the newspapers, if any, printed in said city or town, thirty days at least before such election. They shall also ten days before any such election, appoint a warden and ward clerk for each polling place other than the one in which the warden duly elected for such ward shall preside, who shall perform the same duties at elections as presiding officers and clerks of towns and wards now perform. Any vacancy occurring after appointment may be filled by the voters of said polling district as similar vacancies are now filled. All such officers shall be sworn. The board of registration of voters for any city in which a ward has been so divided, and the municipal officers of any town which has been so divided, shall in the manner now provided for by law, prepare check lists of the qualified voters for each of said polling districts, in lieu of the check lists now provided by law for the entire town or ward, to be used as hereinafter provided, and all provisions of law applicable to check lists for towns and wards shall apply to check lists for such polling districts. R. S. c. 6, § 20.

The municipal officers of cities, towns and plantations voting in accordance with the provisions of this chapter, shall biennially in the month of May appoint clerks for each polling place; and such municipal officers shall appoint as such clerks such persons as shall be recommended for such appointment by the several political party committees of the several cities, towns or plantations, representing the two political parties which, at the gubernatorial election next preceding such appointment, cast the greatest number of votes. R. S. c. 6, § 21.

For each polling place in cities and towns four clerks, and for each polling place in plantations, and for each island ward of the city of Portland and for the island district of the town of Cumberland two clerks shall be appointed. Said clerks shall equally represent each of the political parties which cast the largest number of votes in the state election next preceding their appointment. Each of said clerks shall be sworn to the faithful performance of his duties, and shall hold office for two years from the date of his appointment, and until a successor is appointed and qualified, or he vacates the office. Vacancies occurring in the office of elec-

tion or ballot clerks shall be forthwith filled by the municipal officers in towns and plantations and by the mayors of cities in manner hereinbefore provided. Ib.

Such election clerks shall attend at the times and places designated for meetings in their respective wards, towns or plantations for the election of any national, state, county, city or ward officers, and for the determination of any question submitted to the qualified voters of any city by lawful authority, shall be present at and witness the counting by the presiding election officer or officers of all votes cast in such meetings, and shall receive such reasonable compensation for each day's actual service as the municipal officers of their respective cities, towns and plantations may determine. And on the recommendation of the political party committee of any other party represented on the official ballot, said municipal officers shall appoint one such election clerk in each polling place, for such political party, who shall be qualified for the performance of his duties, in like manner as the clerks of the two before mentioned parties, shall hold office for a like term, or for such part thereof as the party for which he is appointed maintains its right to be represented upon the official ballot, and who during said term shall have like rights and duties with the before mentioned clerks to be present at and witness the counting of votes, and shall serve with or without compensation as the municipal officers in any case may deem advisable, vacancies occurring in case of said clerks to be filled as in case of other clerks herein mentioned. Ib.

No person shall be eligible to the position of election clerk in any ward, town or plantation where he is a candidate to be voted for. Ib.

Two of the clerks in each polling place, one from each political party shall be detailed by the municipal officers to act as ballot clerks. The two ballot clerks thus detailed and appointed in each polling place shall have the charge of the ballots therein and shall furnish them to the voters in the manner hereinafter set forth. Ib.

A duplicate list of the qualified voters in each ward, town or plantation shall be prepared for the use of the ballot clerks, and all the provisions of law relative to the preparation, furnishing and preservation of check lists shall apply to such duplicate lists. Ib.

Provisions in the charter of any city for the election of two persons to assist the warden in receiving, sorting and counting

the ballots, are not affected by the provisions hereof; but persons so elected shall be deemed election clerks for that purpose; they shall equally represent the two political parties which, at the state election next preceding cast the greatest number of votes. Ib.

The municipal officers in each city, town or plantation, as aforesaid, shall cause the polling places therein to be suitably provided with a sufficient number of voting shelves and compartments, at or in which voters may conveniently mark their ballots so that in the marking thereof they shall be screened from the observation of others, and each voting shelf and compartment shall have a wooden swing door so arranged that the top thereof shall be not less than six feet from the floor and the bottom of the door shall be at least two feet and six inches from the floor. And such door shall be shut while the voter is within the compartment and no one shall be allowed therein with him, unless he calls for assistance in the marking of his ballot and such assistance shall be so furnished according to the provisions of this act, and a guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within six feet of the ballot boxes and of such voting shelves and compartments. The arrangements shall be such that the ballot boxes shall not be hidden from the view of persons present and the voting shelves and compartments shall be so arranged that the door of each compartment shall be next to the guard rail, so as to admit to full view of the persons just outside of the guard rail those who enter and leave each compartment. The number of such voting shelves and compartments shall not be less than one for every one hundred voters qualified to vote at such polling place, and not less than three in any town, and not less than five in any ward of a city. No persons other than the election officers, election clerks and voters admitted as hereinafter provided, shall be permitted within said rail, except by authority of the presiding election officer or officers for the purpose of keeping order and enforcing the law. Each voting shelf and compartment shall be kept provided with proper supplies and conveniences for marking the ballots. This act shall take effect only in such towns and cities as by a majority vote of the legal voters so voting in such town or city shall adopt it. R. S. c. 6, § 22.

Any person desiring to vote shall give his name, and, if requested to do so, his residence, to one of the ballot clerks, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found upon the

check list by the ballot clerk having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the guard rail, as above provided. The ballot clerk shall give him one, and only one ballot, and his name shall be immediately checked on said list. R. S. c. 6, § 23.

Besides the election officers, and election clerks, not more than two voters in excess of the number of voting shelves or compartments provided, shall be allowed in said inclosed space at one time. Ib.

On receipt of his ballot the voter shall forthwith, and without leaving the inclosed space, retire alone to one of the voting shelves or compartments so provided, and shall prepare his ballot by marking in the appropriate margin or place, a cross (X) as follows: He may place such mark within the square above the name of the party group or ticket, in which case he shall be deemed to have voted for all the persons named in the group under such party or designation. And if the voter shall desire to vote for any person or persons, whose name or names are not printed as candidates on the party group or ticket, he may erase any name or names which are printed on the group or party ticket, and under the name or names so erased he may fill in the name or names of the candidates of his choice. Or if the voter places and sticks on and over the name or names of any candidate or candidates for any office or offices, a small strip or strips of paper, commonly known as a sticker or stickers, bearing thereon a name or names other than the name or names of the candidate or candidates so erased or covered up, the name or names of such candidate or candidates so covered shall be considered to be erased from the ballot, and the person or persons whose name or names shall so appear on such strip or strips of paper so placed and stuck on the ballot, shall be deemed to be voted for by the voter as candidate or candidates for such office or offices. Or if the voter does not desire to vote for a person or persons whose name or names are printed upon the party group or ticket, he may erase such name or names with the effect that the ballot shall not be counted for the candidate or candidates whose names are so erased. In case of a question submitted to the vote of the people he shall place such mark in the appropriate margin above the answer which he desires to give. Before leaving the voting shelf or compartment, the voter shall fold his ballot without displaying the marks thereon, in the same way it was folded when received by him, and he shall keep the same so folded until he has voted. He shall vote in the manner provided by law before

leaving the enclosed space, and shall deposit his ballot in the box with the official endorsement uppermost. He shall mark and deposit his ballot without undue delay and shall quit said inclosed space as soon as he has voted. No such voter shall be allowed to occupy a voting shelf or compartment already occupied by another, or to remain within said inclosed space more than ten minutes, or to occupy a voting shelf or compartment for more than five minutes in case all of such shelves or compartments are in use, and other voters are waiting to occupy the same. No voter not an election officer or an election clerk, whose name has been checked on the list of the ballot clerks, shall be allowed to re-enter said enclosed space, during said election. The presiding election officer or officers, for the time being, shall secure the observance of the provisions of this section. R. S. c. 6, § 24.

No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. The ballots thus returned shall be immediately canceled, and together with those not distributed to the voters, shall be preserved, and with the check lists used, which shall be certified by the ballot clerks, to be such, shall be secured, sealed, and sent to the several city, town and plantation clerks, and by them be preserved for six months as a public record. The ballots shall be sorted and counted in open town or ward meeting in such manner as to afford the electors ample opportunity to observe the sorting and counting; and when the ballots have been sorted and counted and the results declared and recorded, all the ballots shall, in open meeting, be sealed in a package, which said package, together with the check lists sealed in the same manner as the ballots, shall forthwith be returned to the city, town or plantation clerk, to be preserved by him as a public record, and shall be kept by him securely locked in an iron safe, whenever such city, town or plantation shall so provide the same for his use as such clerk, for six months, and any warden, ballot clerk, city or town clerk or other person who shall abstract from or in any manner tamper with said packages, or who shall in any manner abstract from or tamper with the unused ballots, and any such clerk who shall willfully and intentionally refuse or neglect to so safely keep secured such ballots, as herein above provided, shall be punished by a fine not less than two hundred nor more than one thousand dollars, or by imprisonment for not less than ninety days nor more than two years. R. S. c. 6, § 25.

Any voter who shall declare to the presiding election officer or officers that he cannot mark his ballot by reason of physical disability, or from inability to read the same, shall receive the assistance in the marking of his ballot, of two of the election clerks; such clerks shall not both represent one and the same political party, and they shall certify on the outside of such ballot that the same was marked by them, or by the voter with their assistance, and thereafter shall give no information concerning the same. The presiding election officer or officers may require every voter, who applies for such assistance, to make oath to his inability to mark his ballot, before such clerks shall be directed to assist as aforesaid, and such officer or officers are hereby qualified to administer such oath, and no clerk shall assist or offer to assist any voter in marking his ballot until directed so to do by the presiding election officer or officers. R. S. c. 6, § 26.

If a voter marks more names for any one office than there are persons to be elected to such office, or if for any reason it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office. No ballot without the official indorsement shall, except as herein otherwise provided, be allowed to be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this chapter shall be counted. Ballots not counted shall be marked defective on the back thereof, and shall be preserved, as required by section twenty-five. R. S. c. 6, § 27.

Meetings for the election of national, state, county and municipal officers may be opened as early as six o'clock in the forenoon, and in no case shall the polls be kept open later than five o'clock in the afternoon, and a notice of the time of opening and closing shall be given in the warrant calling the meeting. R. S. c. 6, § 28.

A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person with an apparent intention of letting it be known how he is about to vote or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere, or attempt to interfere with any voter when inside said inclosed space, or when marking his ballot, or who shall endeavor to induce any voter before voting to show how he marks or has marked his ballot, shall be punished by fine of not less than five, nor more than one hundred dollars; and election officers shall report any person so doing to a police officer or constable, whose duty it shall be to see that the offender is duly brought before the proper court. R. S. c. 6, § 29.

Any person who shall, prior to an election willfully deface or destroy any list of candidates posted in accordance with the provisions of this act, or who, during an election, shall willfully deface, tear down, remove or destroy any card of instructions or specimen ballot printed or posted for the instruction of voters, or who shall, during an election, willfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his ballot, or shall willfully hinder the voting of others, shall be punished by fine of not less than five nor more than one hundred dollars. R. S. c. 6, § 30.

Any person who shall falsely make or willfully deface or destroy any certificate of nomination or nomination paper, or any part thereof or any letter of withdrawal; or file any certificate of nomination or nomination paper, or letter of withdrawal, knowing the same or any part thereof to be falsely made; or suppress any certificate of nomination or nomination paper, or any part thereof which has been duly filed; or forge or falsely make the official indorsement on any ballot; or willfully destroy or deface any ballot, or willfully delay the delivery of any ballots or shall take or remove any ballot outside of the inclosure provided for voting before the close of the polls, shall be punished by fine not exceeding one thousand dollars or by imprisonment in the jail for not more than one year, or by both such fine and imprisonment. R. S. c. 6, § 31.

Any public officer upon whom a duty is imposed by sections one to twenty-eight, both inclusive, of this chapter, who shall willfully neglect to perform such duty, or who shall willfully perform it in such a way as to hinder the objects of this act, shall be punished by a fine of not less than five, nor more than one thousand dollars, or by imprisonment in jail for not more than one year, or by both such fine and imprisonment. R. S. c. 6, § 32.

Any election or ballot clerk who shall assist, or offer to assist any voter, before such clerks shall have been directed by the presiding officer or officers to so assist such voter, shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars or by imprisonment not exceeding sixty days for each offense, and thereafter shall be disqualified from holding the office of election or ballot clerk. R. S. c. 6, § 33.

The elective franchise must be exercised under such regulations and restrictions as the legislature may deem reasonably necessary to maintain order at elections, prevent intimidation, bribery and fraud, preserve the purity of the ballot box and thus secure a genuine expression of public sentiment. 86 Me. 42.

Statutes designed to secure complete and inviolable secrecy of ballots cast at public elections should be construed, under established rules with reference to the mischief to be remedied and the object to be accomplished; and interpreted, if practicable, so as to promote and not destroy the purpose of their enactments. Ib.

The enactment of the statute of eighteen hundred and ninety-one, chapter one hundred and two, popularly known as the "Australian Ballot Law," was designed to inaugurate an important departure from the mode of voting which had existed in this state prior to its passage. Ib.

Its distinguishing feature is its careful provision for a secret ballot. Ib.

Under this statute giving the voter a clear opportunity to designate by a cross mark (X) his choice of candidates, the place and method of marking the ballot being regulated and defined in the statute, it was *Held*, that ballots defectively and illegally marked as follows should be rejected:—

1. Where the cross (X) was placed above the name of the candidate and not in the appropriate place at the right of it;

2. Where there was a cross (X) above and also one beneath a candidate's name, but none at the right of it;

3. Where the cross (X) was placed at the left of the name of the candidate;

4. Where there was a cross (X) under the party name at the head of the ticket and one at the left of the defendant's name on another party ticket;

5. Where there was no cross (X) whatever, but a short, straight line drawn across the square at the right of the party name at the head of the ticket;

6. Where there was a cross (X) in the square at the right of the name of each candidate except that for mayor, on one party ticket, and a cross (X) in the square at the right of the party name on another ticket. Ib.

The board of aldermen in the city of Bangor re-examined the ballots cast for aldermen in ward seven, counted for defendant the six ballots above described, and declaring that there was no choice, ordered a new election to be held. The defendant securing a majority of the ballots then cast claimed to hold the office by virtue of the second election; that the subject matter was within the exclusive jurisdiction of the board of aldermen;

and that the ballots alleged to be defective and irregular were properly counted for him. The plaintiff thereupon began his proceeding in equity under revised statutes, chapter four, and statute of eighteen hundred and ninety-three, chapter two hundred and sixty, amendatory thereto, asking the court to take jurisdiction of the matter, and require the defendant to surrender the office to the plaintiff. *Held*, that the decision of the board of aldermen is subject to review by this court; that the city charter is to be construed as affording a cumulative or primary tribunal only, and not an exclusive one; that it does not preclude a contestant from resorting to the court for a revision of a question of law; and that the decision of the board of aldermen involved the determination of a question of law and not an issue of fact, or a matter of discretion. *Ib*.

Emery J. By act of eighteen hundred and ninety-one, chapter one hundred and two, section twenty-five, as amended by act of eighteen hundred and ninety-three, chapter two hundred and sixty-seven, being "An Act to provide for the printing and distributing ballots at the public expense, and to regulate voting for state and city elections," it is provided that after the election is over "when the ballots have been sorted and counted and the result declared and recorded, all the ballots shall in open meeting be sealed in a package which said package, together with the check lists sealed in the same manner as the ballots, shall be forthwith delivered to the city, town or plantation clerk to be preserved by him as a public record for six months." The clerk and all other persons are forbidden to "abstract from or in any manner to tamper with" said package.

At the state election of eighteen hundred and ninety-eight the petitioner's name was on the official ballots in the town of Kittery as a candidate for representative to the legislature. According to "the result declared and recorded" he failed of an election, but he believed that if the ballots had been properly sorted and counted he would appear to be elected. He desires to inspect the ballots used in that election and which were sealed in a package and returned to the town clerk of Kittery, and are now in his office still sealed up in that package, the six months not having expired. Has he any legal right to inspect them? It is argued that he can only inspect the interior of the package, that it is the package sealed and to be kept sealed, and not its contents, which is to be "preserved by the clerk as a public record." Such a construction would leave the statutes without meaning or purpose.

The only use suggested in the argument for packages which are to be kept sealed is that they can be taken into the courts or legislature and there unsealed and sealed again. There is, however, no suggestion in the act that the packages are to be taken from the clerk's office, or that an inspection of their contents can be had only by the court or legislature.

The contents of the packages, the ballots, are the concern of the statutes. Its language must be applied to them. They are to be preserved. They are to be "the public record," and their place is in the custody of the town clerk. A record, however, is not public unless it can be inspected by any person interested in what it shows.

It is again urged that the clerk is forbidden to "in any manner tamper with" the package. Taken by itself this language might indicate that the clerk could not open the package, though the word "tamper" in a criminal statute at least, has a limited meaning of improper interference "as for the purpose of alteration ; and to make objectionable or unauthorized changes." (Cent. Dict.) Taken in connection with the language of the statutes declaring the packages (in their contents) to be public records, it is evident that the clerk is not forbidden to open the packages to enable interested persons to inspect the ballots.

We think the petitioner has a legal right to inspect the ballots, a right which the town clerk must accord him, and that the mandamus must be made peremptory. It does not follow, however, that the petitioner or any one in his behalf can sort or count, or in any way handle or even touch the ballots. He can inspect them and they must be exposed to his inspection, but they are all the while in the custody of the clerk and he is responsible for them. The inspection must be in his presence, and he can make and insist on such regulations or restrictions consistent with the right of inspection, as will secure every ballot like any other record from loss, impairment or change in any respect. The clerk can afterwards re-seal the package for greater security until inspection is again required by some person interested. 92 Me. 151.

Writing "scattering" on ballot or a return of certain number of votes as scattering, does not invalidate an election provided that such scattering votes however added or subtracted, would not change the result. 71 Me. 373.

It is not a valid objection to an election that illegal votes were received, if they did not change the result. 71 Me. 361 ; 85 Me. 273.

Selectmen liable for unreasonably refusing to allow a person to vote, who has a right to vote. Depends upon whether the refusal was unreasonable or not. Selectmen may believe they are right in refusing a vote and yet be liable, if, in fact, the refusal was unreasonable. Not liable if question presented to them be so doubtful that reasonable and competent men, unaffected by bias or prejudice, might naturally differ in their views upon it. 76 Me. 164.

From the known practice of towns to choose three selectmen, it will be presumed, unless the contrary appears, that number was chosen. 48 Me. 353.

Yes and No ballots proper on special questions. 87 Me. 88.

Cross must be made at place designated by the statute. 86 Me. 42.

The statute is strictly construed. Ib. A straight line, instead of a cross, is not sufficient. Ib.

CHAPTER XXX.

TAXATION.

Taxes are the enforced proportional contribution of each citizen and of his estate, levied by the authority of the state for the support of the government and for all public needs. They are the property of the citizen, taken from the citizen by the government, and they are to be disposed of by it. The necessities of government are more or less extensive according to the greater or lesser extent of governmental interference. Taxation originates from and is imposed by the state. The proceeds are for the government to enable it to carry into effect its mandates and to discharge its manifold functions. 58 Me. 591.

In a narrower sense, and as opposed to "excise," a tax is "a charge apportioned either among the whole people of the state, or those residing within certain districts, municipalities or sections." 11 Allen 268.

The power of taxation is an essential and inherent attribute of sovereignty. It belongs, as a matter of right, to every independ-

ent political community. No constitutional government can exist without it, and no arbitrary government, without regular and steady taxation, could be anything but an oppressive and vexatious despotism, since the only alternative to taxation would be a forced extortion for the needs of government for such persons or objects as the men in power might select as victims. It imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or forfeiture of property. Cooley Constitutional Limitations 479.

In the federal constitution there is an expressed grant to congress of the power to "levy and collect taxes." The constitution of the State of Maine does not confer its power upon the legislature by any specific clause. It passes under the general designation of "legislative power." It is implied, upon the principle, that a grant of legislative, judicial, and executive powers, carries with it by construction, all the means necessary for their execution. Blackwell on Tax Titles 2.

The power of taxation operates upon all persons and property within territorial jurisdiction of the state. There is no limitation upon the power of the legislature as to the amount or objects of taxation. The interest, wisdom, and justice of the representative body, and its relation with its constituents, furnish the only security against unjust and excessive taxation. These principles are fully sustained by the authorities. Such is the nature, necessity and extent of the taxing power. 4 Peters 514; 11 Allen 268; 10 N. H. 138; 8 Allen 247. But taxes can be laid for public purposes only. Gray Lim., § 173.

The power to levy a tax properly belongs to the legislative power. The collection of it involves the exercise of judicial and executive functions. The legislature levy the tax direct that a demand shall be made on the owner of the land for the tax charged against it, and if payment is refused, authorize the collector to seize the body or goods of the delinquent, and in case satisfaction is not had in one or the other of these modes, power is conferred upon the collector to sell and convey the land itself. Now, before the power to sell the land can exist under the law, the fact of the levy and non-payment of the tax, the demand, and returns of no goods, or that the body cannot be found, must exist. These facts must be ascertained to exist before the power of sale attaches. Whether the power to decide the question of delinquency is vested by law in the regularly constituted judicial tribunals, or in those specially instituted for that purpose, or in

the collector himself, can make no kind of difference; it is the exercise of judicial power and the officer who sells performs an executive function; as that, in point of fact, the legislative, judicial, and executive departments of the government, all aid in the execution of the taxing power. Blackwell on Tax Titles 26.

It is undoubtedly a principle of natural justice, that every person shall have an opportunity of being heard before he is condemned; and to a hearing every tax-payer is entitled—but not before the ministerial officers of the law. They act at their peril in sale of lands of the person assessed, where the taxes have been paid or where they have not strictly complied with the law of the land; and he acts at his peril in determining the question whether he will redeem or contest the validity of the sale. If he adopts the latter course, then, and not till then, is he entitled to be fully heard in his defense in the judicial tribunals of the country. 4 N. H. 18.

No tax or duty shall be imposed without the consent of the people or of their representatives in the legislature. Const. art. 1, § 22.

The legislature have the same right to remove a burden as to impose it. It is a matter for their determination, and it is not for the court to say that a tax shall be enforced which they, by statute, decree shall not be enforced. 57 Me. 394.

While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years. Const. art. 9, § 7.

This section contemplates only the general, constantly recurring assessment upon the same property, and does not include occasional, exceptional and special subjects and modes of taxation. 86 Me. 502.

The expenses for which assessments are to be made shall be public; those appertaining to the public service. 62 Me. 73.

Statutes assuming to delegate to towns the power of determining whether or not certain manufacturing corporations therein shall be exempted from taxation, are unconstitutional and void. 62 Me. 451.

The legislature may authorize municipal corporations to aid in the construction of railroads. 63 Me. 277.

All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof. Const. art. 9, § 8.

The legislature can not discriminate in the rate of taxation between incorporated and unincorporated territory. The apportionment and assessment each must be equal throughout the whole state. 97 Me. 597.

The legislature may authorize a municipal corporation to purchase and pay for, by money raised by taxation or otherwise, an existing water works system for the purpose of supplying water for its own municipal wants and for the domestic uses of its inhabitants. 96 Me. 556.

Where property was assessed by city assessors and there was no appeal therefrom, it must be assumed that the requirements of law were observed and that the property was assessed "according to the just value thereof." 88 Me. 180.

All taxes, state, county and municipal, must be levied by the legislature directly, or under general statutes. 84 Me. 215.

One portion of real estate of a town cannot be burdened with an assessment for a public purpose from which the remainder is exempt. 70 Me. 522; 62 Me. 62.

The legislature may authorize a town to exempt from taxation for a term of years property of a water company, in consideration of an undertaking and agreement by the company to furnish, free of costs to the town, a supply of water for its public and municipal purposes. 67 Me. 136.

The legislature shall never, in any manner, suspend or surrender the power of taxation. Const. art. 9, § 9.

The legislature cannot constitutionally transfer to municipal corporations the power of determining upon what property, real or personal, taxes shall and upon what they shall not be imposed. 62 Me. 62.

CHAPTER XXXI.

THE ASSESSMENT OF TAXES.

A poll tax shall be assessed upon every male inhabitant of the state above the age of twenty-one years whether a citizen of the United States or an alien, in the manner provided by law, unless he is exempted therefrom by this chapter, which said poll

tax shall not exceed three dollars and shall not be less than one dollar. R. S. c. 1, § 9.

In a suit to collect taxes assessed against a person it was *Held*, that the domicile in any particular locality is acquired by a union of intent and of presence. 66 Me. 198.

In an action by a collector of taxes, to recover a poll tax assessed upon a person in a town where he was not an inhabitant at the time the tax was assessed, the defendant may show his non-residence in defense. 64 Me. 199.

An inhabitant of A, on March thirtieth, leaves that place with the intention of residing in C; on April first he arrives at B and the next day reaches C, where he establishes his residence. *Held*, that for the purposes of taxation he was to be deemed an inhabitant of A on April first, and was liable to taxation there. 50 Me. 475.

All real property within the state, all personal property of inhabitants of the state, and all personal property hereinafter specified of persons not inhabitants of the state, is subject to taxation as hereinafter provided. R. S. c. 9, § 2.

Buildings and other property owned by municipal corporations and appropriated to public use are exempt from general taxation. 77 Me. 530.

Unimproved land is subject to assessment for taxation. 74 Me. 283.

All real estate is expressly made subject to taxation, unless when specifically exempted; and, for the purposes of taxation, the term "real estate" includes "all lands and buildings and other things erected on or affixed to the same." 60 Me. 198.

The term "inhabitants" as used in section two of chapter nine of the revised statutes embraces bodies corporate as well as individuals. The property of corporations, when not otherwise subjected to assessment to the shareholders, is taxable to such corporation. 37 Me. 369.

Real estate, for the purposes of taxation, except as provided in section six, includes all lands in the state and all buildings erected on or affixed to the same, and all townships and tracts of land, the fee of which has passed from the state since the year eighteen hundred and fifty, and all interest in timber upon public lands derived by permits granted by the commonwealth of Massachusetts; interest and improvements in land, the fee of which is in the state; and interest by contract or otherwise in

land exempt from taxation. There shall be a lien to secure the payment of all taxes legally assessed on real estate as defined in this section, which shall take precedence of all other claims on said real estate and interests, and shall continue in force until said taxes are paid. R. S. c. 9, § 3; 9 Me. 91; 60 Me. 198; 69 Me. 347; 86 Me. 77.

The word "land or lands," and the words "real estate," include lands and all tenements and hereditaments connected therewith, and all rights thereto and interest therein. R. S. c. 1, § 6.

Water pipes, hydrants, and conduits of a water company, laid through the streets of a city or town, are taxable as real estate to the company in possession of them, in the city or town where they are laid. 85 Me. 330.

A toll bridge is taxable as real estate. 78 Me. 93.

Unimproved lands may be taxed to an owner residing in another town in the state. 74 Me. 280.

The buildings of every railroad corporation or association, whether within or without the located right of way, and its lands and fixtures outside of its located right of way, are subject to taxation by the cities and towns in which the same are situated, as other property is taxed therein, and shall be regarded as non-resident land. R. S. c. 9, § 4.

Railroad depots and other buildings erected upon the land of railroad corporations are to be regarded as real estate for the purpose of taxation. 60 Me. 198.

Personal estate for the purposes of taxation, includes all goods, chattels, moneys and effects, wheresoever they are; all vessels, at home or abroad; all obligations for money or other property; money at interest, and debts due the persons to be taxed more than they are owing; all public stocks and securities; all shares in moneyed and other corporations within or without the state, except as otherwise provided by law; all annuities payable to the person to be taxed, when the capital of such annuity is not taxed in this state; and all other property, included in the last preceding state valuation for the purposes of taxation. R. S. c. 9, § 5; 36 Me. 259; 54 Me. 542; 56 Me. 288.

A tax upon its personal property to a corporation and another tax at the same time upon its shares of its stockholders is double taxation and not authorized by law. 103 Me. 429.

In the assessment of personal property for taxation the amount which the person to be taxed is owing is to be deducted from the money which he has at interest and the debts due him. 102 Me. 401.

The statute makes no distinction between money at interest and debts due the person to be taxed as to his right to have the same reduced in the assessment by the amount of debts which he is owing. 102 Me. 401.

An award by the committee on arbitration of Alabama claims does not constitute a debt due to be taxed, under the provisions of this section, until an appropriation is made by Congress for the payment of the award. 68 Me. 33.

The following property and polls are exempt from taxation :

First. The property of the United States and of this state, and the property of any public municipal corporation of this state, appropriated to public uses. R. S. c. 9, § 6.

Lands with the tenements and appurtenances, so acquired for the purposes before mentioned, are exempt from taxation by the state. 101 Me. 148.

(NOTE: This section refers to land purchased within the state by the United States for public buildings, forts, lighthouses, and similar purposes.)

The Augusta River Water District is a public municipal corporation, and by virtue of this section its property, appropriated to public uses, is exempt from municipal taxation. 101 Me. 149.

Second. All property which by the articles of separation is exempt from taxation; the personal property of all literary and scientific institutions; the real and personal property of all benevolent and charitable institutions incorporated by the state; the real estate of all literary and scientific institutions occupied by them for their own purposes or by any officer thereof as a residence. Corporations whose property or funds in excess of their ordinary expenses are held for the relief of the sick, the poor, or the distressed, or of widows and orphans, or to bury the dead, are benevolent and charitable corporations within the meaning of this specification, without regard to the sources from which such funds are derived, or to limitations in the classes or persons for whose benefit they are applied; but so much of the real estate of such corporations as is not occupied by them for

their own purposes, shall be taxed in the municipality in which it is situated. And any college in this state authorized under its charter to confer the degree of bachelor of arts or of bachelor of science, and having real estate liable to taxation, shall, on the payment of such tax and proof of the same to the satisfaction of the governor and council be reimbursed from the state treasury to the amount of the tax so paid; *provided, however*, that the aggregate amount so reimbursed to any college in any one year shall not exceed fifteen hundred dollars; and *provided, further*, that this claim for such reimbursement shall not apply to real estate bought by any such college after April twelve, eighteen hundred and eighty-nine. R. S. c. 9, § 6.

(NOTE: By the articles of separation of June 19, 1819, condition seven, there is an exemption of all real estate in Maine belonging to the commonwealth of Massachusetts, and all real estate of religious, literary and charitable corporations and societies heretofore exempted by Massachusetts. 65 Me. 92; 73 Me. 433, 441; 86 Me. 76, 78, 246.)

The real estate of a benevolent and charitable institution incorporated by the state, consisting of a building, and land upon which it sits, designed for use by it for its own purposes, and a substantial use all of which is made by the institution for its own purposes in good faith, is exempt from taxation under this paragraph, notwithstanding the occupation by the institution may not be exclusive, and the owner may sometimes allow other associations and individuals to use some portions of the property for a rental, when it can be done without interfering with the use of the same by the owner for its own purposes. 99 Me. 356.

The occupation contemplated by the statute must undoubtedly be an actual occupation, and something more is required than that which results merely from ownership and opposition on the part of the institution, or from the use of the property for investment purposes. 99 Me. 356.

There may be cases where the use of the property of such an owner for other purposes is of such a dominant character, and the occupation of the owner for its own purposes is so incidental and trivial, or where the uses of the property by the owner for its own purposes is so plainly an attempt to evade taxation, the substantial use and occupation being for other purposes, that such occupation would not be sufficient to make the property exempt from taxation under the statutes of Maine. 99 Me. 356.

The statute exempts "real and personal property of benevolent or charitable institutions incorporated by the state," but does not exempt property of a voluntary association having no corporate existence. 61 Me. 586.

Third. The household furniture of each person, not exceeding two hundred dollars to any one family, his wearing apparel, farming utensils, mechanics' tools necessary for his business, and musical instruments not exceeding in value fifty dollars to one family. R. S. c. 9, § 6.

Fourth. Houses of religious worship, including vestries, and the pews and furniture within the same, except for parochial purposes; tombs and rights of burial; and property held by a religious society as a parsonage, not exceeding six thousand dollars in value, and from which no rent is received, and personal property not exceeding six thousand dollars in value. But all other property of any religious society, both real and personal, is liable to taxation the same as other property. Ib.

Where a defendant built a cottage upon a lot of land under a parol license expressed as a lease in perpetuum, given by a camp meeting association, it was held that the cottage and land on which it stood may properly be assessed as real estate to the defendant as tenant in possession. 86 Me. 77.

The property of an incorporated association whose purposes are for diffusing Christian knowledge, and to cultivate Christian acquaintance, and to communicate intelligence respecting the state of religion, is within the provisions of this section. 65 Me. 93.

Fifth. All mules, horses, neat cattle, swine and sheep, less than six months old. R. S. c. 9, § 6.

Sixth. Hay, grain and potatoes, orchard products and wool, owned by and in possession of the producer. Ib.

Seventh. The polls and estates of Indians; and the polls of persons under guardianship, or blind. Ib.

Eighth. The polls and estates of persons who by reason of age, infirmity or poverty, are in the judgment of the assessors unable to contribute toward the public charges; and the polls of all soldiers and sailors who receive state pension. Every soldier or sailor who served in the army or navy of the United States in the war of eighteen hundred and sixty-one and five, and who has an honorable discharge from such service, resident within the State of Maine, is hereby forever exempt from the assessment of

and payment of a poll tax within any city, town or plantation in this state, *provided, however*, that any such sailor or soldier who desires to pay said tax may, on or before the first day of April, in each year, notify in writing the assessors of the city, town or plantation in which he resides of his desire to pay said tax, whereupon said assessors shall assess said tax against said soldier or sailor, and said soldier or sailor shall be legally holden to pay said tax. Ib.; 92 Me. 443.

Ninth. The aqueducts, pipes and conduits of any corporation, supplying a town with water, are exempt from taxation, when such town takes water therefrom for the extinguishment of fires, without charge. But this exemption does not include therein, the capital stock of such corporation, any reservoir or grounds occupied for the same, or any property, real or personal, owned by such company or corporation, other than as hereinabove enumerated. Ib.

A town where such aqueduct is located may put conductors into its pipes and draw water, free of expense, to extinguish fire in a burning building, if such conductors are so secured that water shall be drawn for that purpose only. R. S. c. 56, § 8.

Tenth. Whenever a land owner, plants or sets apart for the growth and production of forest trees any cleared land or lands from which the primitive forest has been removed, and successfully cultivates the same for three years, the trees being not less in numbers than six hundred and forty on each acre and well distributed over the same, then, on application of the owner or occupant thereof to the assessors of the town in which such land is situated, the same shall be exempt from taxation for twenty years after the expiration of said three years, *provided*, that said applicant at the same time files with said assessors a correct plan of such land with a description of its location, and a statement of all the facts in relation to the growth and cultivation of said incipient forest; *provided, further*, that such grove or plantation of trees is during that period kept alive and in a thriving condition. R. S. c. 9, § 6.

Eleventh. Mines of gold, silver or of the baser metals, when opened and in process of development, are exempt from taxation for ten years from the time of such opening. But this exemption does not affect the taxation of the lands or the surface improvements of the same, at the same rate of valuation as similar lands and buildings in the vicinity. Ib.; 99 Me. 356.

Twelfth. All bonds issued after the first day of February

nineteen hundred and nine, by the State of Maine, or any county, municipality, village corporation or water district therein, shall be exempt from taxation. Ib.

Any seven or more persons may be incorporated in the manner provided in sections one and two of chapter fifty-seven, for the purpose of owning, managing and protecting lands and their appurtenances appropriated for public cemeteries; and the property of such corporations and the shares of stock therein, are exempt from attachment and taxation. R. S. c. 20, § 19.

The poll tax shall be assessed on each taxable person in the place where he is an inhabitant on the first day of each April. No person shall be considered an inhabitant of a place on account of residing there as a student in a literary seminary. R. S. c. 9, § 7.

Taxes on real estate shall be assessed in the town where the estate lies, to the owner or person in possession thereof on the first day of each April. In cases of mortgaged real estate, the mortgagor, for taxation, shall be deemed the owner, until the mortgagee takes possession, after which the mortgagee shall be deemed the owner. R. S. c. 9, § 8; 32 Me. 69; 34 Me. 90; 35 Me. 554; 86 Me. 77; 95 Me. 293.

Water pipes, hydrants and conduits of a water company, laid through the streets of a city or town are real estate for the purpose of taxation. 85 Me. 330.

Unimproved land may be taxed to an owner residing in another town in the state. He is liable to taxation for such land. A description by which the owner can know with reasonable certainty for what lands he is assessed, is sufficient. 74 Me. 280.

The liability of all estate to taxation relates back to April 1st of each year. 56 Me. 46.

Whenever the owner of real estate notifies the assessors that any part of the wood, bark and timber standing thereon has been sold by contract in writing, and exhibits to them proper evidence, they shall assess such wood, bark and timber to the purchaser. R. S. c. 9, § 9.

A lien is created on such wood, bark and timber, for the payment of such taxes; and may be enforced by the collector by a sale thereof when cut, as provided in section eighteen of chapter ten. R. S. c. 9, § 10.

When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent half of the taxes paid by him; and

when a landlord is assessed for such real estate, he may recover half of the taxes paid by him and his rent in the same action against the tenant, unless there is an agreement to the contrary. R. S. c. 9, § 11.

All personal property within or without the state, except in cases enumerated in the following section, shall be assessed to the owner in the town where he is an inhabitant on the first day of each April. R. S. c. 9, § 12; 37 Me. 371; 48 Me. 443; 49 Me. 369, 430; 54 Me. 543; 79 Me. 233; 83 Me. 228; 91 Me. 511.

To tax the shares of a corporation to the shareholders, and to tax at the same time the property of the corporation itself, imposes in effect, if not in theory, a double tax burden on the shareholders. 103 Me. 418.

A resident of S cut wood on land in said town and conveyed to a landing place before April first, there to remain until sold. *Held*, in suit against town to recover taxes paid under protest, that the wood was "personal property employed in trade." 83 Me. 143.

A cotton broker having large quantity of cotton in warehouses and paying storage thereon, but having no store, and having desk room only in an office, does not "occupy any store" within meaning of the statute. 81 Me. 296.

An award by the committee of arbitration on the Alabama claims does not constitute a debt due to be taxed, under the provisions of this section until an appropriation is made by congress for the payment of the award. 68 Me. 33.

To constitute a change of domicile there must be a concurrence of the intention to make, and the fact of making such change. The acts and intentions of the wife do not affect the domicile of the husband. 61 Me. 457.

Personal property belonging to a railroad corporation, but not composing any part of its capital stock, is liable to be taxed where the corporation has its place of business. 60 Me. 196.

Logs, timber, etc., designed and intended to be manufactured and sold in some town other than that in which their owner resides, but in which, on the first day of April, he occupies a mill, store or wharf, are rightfully taxable in such town, and not in the town where the owner resides, although they may not, on the first day of April, in the year for which the tax is assessed, have actually arrived within the corporate limits of the

town, provided they are in the course of the year brought there and manufactured. 53 Me. 519; 93 Me. 333.

A domicile once acquired continues until a new one is gained. While in transit the old domicile remains. If an inhabitant leaves a town on March thirty-first with the intention of residing in another town and does not reach the other town until April second, for the purpose of taxation he is to be deemed an inhabitant of the first town and liable to be taxed there. 50 Me. 475.

The excepted cases referred to in the preceding section are the following :

First. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts, shall be taxed in the town where so employed on the first day of each April; *provided*, that the owner, his servant, sub-contractor or agent, so employing it, occupies any store, storehouse, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment. R. S. c. 9, § 13; 53 Me. 519; 59 Me. 286, 289; 60 Me. 279; 81 Me. 296; 83 Me. 145; 93 Me. 333.

The plaintiff, an inhabitant of another town, was the owner on the first day of April of a quantity of firewood piled upon a wharf for which he was taxed in that year by the assessors of that town. Having paid taxes under protest he sought in this action to recover it. The wood was placed on the wharf for the purpose of shipping it when the river opened for navigation in the spring. *Held*, that said firewood was merely in transit and not taxable. 91 Me. 509.

The occupancy of a portion of a wharf assigned to a non-resident by metes and bounds, to which he brought from his mills in another town, his lumber, placed it thereon, and it there remained for several months, awaiting a sale or shipment,—his right thus to use the premises, being (by a written lease) fixed and certain for a long period of time,—was *Held*, to be an occupancy contemplated by the statute. 48 Me. 479.

Second. Personal property, including yachts and pleasure vessels whether propelled by sail, steam, gasoline or otherwise, which on the first day of each April is within the state and owned by persons residing out of the state or by persons unknown; except vessels built, in process of construction, or undergoing repairs, and hides and the leather, the product thereof, when it appears that the hides were sent into the state to be tanned, and to be carried out of the state, when tanned shall be taxed either to the

owner, if known, or to the person having the same in possession, or to the person owning or occupying any store, shop, mill, wharf, landing, shipyard or other place therein where said property is on said day, and a lien is created on said property in behalf of such person, which he may enforce for the repayment of all sums by him lawfully paid in discharge of the tax. A lien is also created upon the property for the payment of the tax, which may be enforced, by the constable or collector to whom the tax is committed, by a sale of the property, as provided in sections twelve, eighteen and nineteen of chapter ten. If any person pays more than his proportionate part of such tax, or if his own goods or property are applied to the payment and discharge of the whole tax, he may recover of the owner such owner's proper share thereof. Persons engaged in tanning leather in the state, shall on or before the first day of each April, furnish to the assessors of the town where they are carrying on said business, a full account, on oath, of all hides and leather on hand received by them from without the state, and all hides and leather on hand from beasts slaughtered in the state, which last named hides and leather shall be taxed in the town where they were tanned. The words "vessels built" in the third line shall not be construed so as to include pleasure vessels or boats. R. S. c. 9, § 13.

Third. Machinery employed in any branch of manufacture, goods manufactured or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed; and in assessing stockholders for their shares in any such corporation, their proportional part of the assessed value of such machinery, goods and real estate, shall be deducted from the value of such shares. *Ib.*; 37 Me. 446; 60 Me. 199; 78 Me. 97; 88 Me. 180.

Fourth. All mules, horses, neat cattle, sheep and swine shall be taxed in the town where they are kept on the first day of each April, to the owner, or person who has them in possession at that time. All such animals, which are in any other town, than that in which the owner or possessor resides, for pasturing or any other temporary purpose on said first day of April, shall be taxed to such owner or possessor in the town where he resides; and all such animals, which are out of the state, or in any unincorporated place in the state on said first day of April, but owned by, or in charge and possession of any person residing in any town, shall be taxed to such owner or possessor in the

town where he resides. If a town line so divides a farm that the dwelling house is in one town, and the barn or outbuildings or any part of them is in another, such animals kept for the use of said farm, shall be taxed in the town where the house is. *Ib.*; 33 Me. 445.

Fifth. Personal property belonging to minors under guardianship, shall be assessed to the guardian in the place where he is an inhabitant. The personal property of all other persons under guardianship, shall be assessed to the guardian in the town where the ward is an inhabitant. *Ib.*

Sixth. Personal property held in trust by an executor, administrator or trustee, the income of which is to be paid to any other person, shall be assessed to such executor, administrator or trustee, in the place where the person to whom the income is payable as aforesaid, is an inhabitant. But if the person to whom the income is payable as aforesaid, resides out of the state, such personal property shall be assessed to such executor, administrator or trustee, in the place where he resides. *Ib.*; 80 Me. 510.

When the estate of a Maine decedent has been fully administered, and has vested in non-resident testamentary trustees, and the property has been removed by them from the state, they cannot be directly taxed in this state for such property, although they have qualified as such trustees in the Maine probate court which confirmed their appointment by the decedent, and although the beneficiaries under the trust reside in this state. It would seem, however, that the beneficiaries under such a trust resident in this state can be directly taxed here upon their beneficial interest in the trust estate. 91 Me. 605.

Seventh. Personal property placed in the hands of any corporation as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to the person for whose benefit it is accumulating, if within the state, otherwise, to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of it or its income, and then to such trustee. R. S. c. 9, § 13; 79 Me. 233.

Eighth. The personal property of deceased persons in the hands of their executors or administrators not distributed, shall be assessed to the executors or administrators in the town where the deceased last dwelt, until they give notice to the assessors that said property has been distributed and paid to the persons entitled to receive it. If the deceased at the time of his death did not reside in the state, such property shall be assessed in the

town in which said executors or administrators live. Before the appointment of executors or administrators the property of deceased persons shall be assessed to the estate of the deceased in the town where he last dwelt, if in the state, otherwise in the town where the property is on the first day of April, and the executors or administrators subsequently appointed shall be liable for the tax so assessed. *Ib.*

A tax on real estate of a deceased intestate, assessed to the "estate" of the deceased after the appointment and qualification of an administrator, is not assessed in conformity with law, and no action therefor, by the town against the administrator, can be maintained. 76 Me. 549.

A tax assessed against the "administrators of A," when the representative parties were executors and not administrators is not a fatal mistake and parole evidence is admissible to show that the executors are the individuals intended to be taxed. 78 Me. 276.

To sustain an action for collection of taxes it must be shown that the tax was so assessed as to make the defendant personally liable for its payment. 90 Me. 493.

An assessment of lands to the "heirs of A," when the estate is held by devisees, is erroneous, and a suit for the tax can not be maintained. 90 Me. 493.

In a suit to collect taxes assessed to "estate of A," testimony to show that the assessors meant to apply to the executor cannot be introduced. 90 Me. 494.

Ninth. Personal property held by religious societies shall be assessed to the treasurer thereof in the town where they usually hold their meetings. R. S. c. 9, § 13; 65 Me. 94.

Tenth. Personal property in another state or country on the first day of each April, and legally taxed there. *Ib.*

The stock of toll bridges shall be taxed as personal property, to the owners thereof, in the towns where they reside, except stock owned by persons residing out of the state, which shall be taxed in the town where the bridge is located, and where such bridge is in two towns, one-half of such stock so owned by persons residing out of the state shall be assessed and taxed in each town. R. S. c. 9, § 14.

When the clerk of a corporation holding property liable to be taxed, fails to comply with section twenty-four of chapter forty-seven, whether the corporation was chartered before or since the

separation of Maine from Massachusetts, such property for the purposes of taxation, shall be deemed corporate property, liable to be taxed to the corporation, although its stock has been divided into shares and distributed among any number of stockholders. R. S. c. 9, § 15.

Cashiers of banks, treasurers of trust and banking and safe deposit companies and clerks or treasurers of other corporations shall ascertain the residences of all stockholders in either; and no dividend shall be paid to any stockholder, whose residence, for the time being, is not entered on the books thereof; and the cashiers of banks, and clerks or treasurers of all corporations holding property liable to be taxed, shall, by the eighth day of April annually, return under oath, to the assessors of each town, in which any of its stockholders reside, the names of such stockholders, the amount of stock owned by them on the first day of such April, and the amount of stock paid into such corporations, and also the value of the real estate, vaults and safe deposit plant, owned by any bank, or trust and banking or safe deposit company which is taxed as other real estate is taxed in the town in which it is located and the amount for which it is valued by the assessors of such municipality for the year previous, and such return shall contain in the body thereof, or by note annexed thereto, an abstract of section thirty-two of chapter nine; and said cashiers of banks, treasurers of trust and banking and safe deposit companies, and clerks or treasurers of such other corporations shall make like returns to the assessors of the town where such bank, company or other corporation is located or transacts its ordinary business, of all the stock in such bank, company or other corporation not returned to the assessors of other towns in the state. Such returns shall be the basis of taxation on such property, deducting the assessed value of the real estate, vaults and safe deposit plant of any bank, trust and banking or safe deposit company as herein provided. R. S. c. 47; 65 Me. 379; 82 Me. 189.

To tax to the individual shareholders the shares of a bank and to tax at the same time to the bank the shares owned by it in other banks, imposes to that extent an extra burden on the shareholders of the bank so taxed. While the tax statutes of the state specifically and explicitly subject the real estate of a bank to taxation to the bank, notwithstanding its shares are also subjected to taxation, they do not specifically and explicitly subject to such taxation shares in other banks owned by it, and

hence it cannot be held liable to taxation upon such shares. 103 Me. 418.

Such property, both real and personal, is taxable for state, county, city, town, school district and parochial taxes, to be assessed and collected in the same manner and with the same effect as upon similar taxable property owned by individuals. If the corporation has the right to receive tolls, such right or franchise may be taken and sold on warrant of distress for payment of such taxes, as such property is taken and sold on execution. R. S. c. 9, § 16; 88 Me. 179.

Blood animals, brought into the state and kept for improvement of the breed, shall not be taxed at a higher rate than stock of the same quality and kind bred in the state. R. S. c. 9, § 17.

When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank, or other corporation in the state, for the security of the public, such investments shall not be liable to taxation except to the stockholders of the company so investing as making a part of the value of their shares in the capital stock of said company. R. S. c. 9, § 18; 103 Me. 418.

(NOTE: See decision under section fifteen, supra.)

When the capital stock of any insurance company incorporated in the state, is taxed at its full value, the securities and pledges held by said company to the amount of said stock, are exempt from taxation; but if the pledge or security consists of real estate in a town other than that where the stockholder resides, it shall be taxed where it lies, and the stock shall be exempt to the amount for which it is assessed. R. S. c. 9, § 19; 103 Me. 418.

(NOTE: See decision under section fifteen, supra.)

When personal property is mortgaged or pledged, it shall for purposes of taxation, be deemed the property of the party who has it in possession, and it may be distrained for the tax thereon. Money or personal property, loaned or passed into the hands or possession of another, by any person residing in the state, secured by an absolute deed of real estate, shall be taxed to the grantee, as in case of a mortgage, although the land is taxed to the grantor or other person in possession. R. S. c. 9, § 20.

The statute authorizes a distress for taxes levied on mortgaged property, but only upon the specific property mortgaged and taxed, and only for the specific tax laid. If a poll tax and

a tax upon other property is joined with such specific tax in the distress, it is a waiver of the lien. 74 Me. 79.

The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they give notice to the assessors of the division of the estate, and the names of the several heirs or devisees; and until such notice is given, each heir or devisee shall be liable for the whole of such tax, and may recover of the other heirs or devisees their portions thereof when paid by him and in an action for that purpose, the undivided shares of such heirs or devisees in the estate, upon which such tax has been paid, may be attached on mesne process, or taken on execution issued on a judgment recovered in an action therefor. Or such real estate may be assessed to the executor or administrator of the deceased, and such assessment shall be collected of him the same as taxes assessed against him in his private capacity, and it shall be a charge against the estate and shall be allowed by the judge of probate; but when such executor or administrator notifies the assessors that he has no funds of the estate to pay such taxes, and gives them the names of the heirs, and the proportions of their interests in the estate to the best of his knowledge, the estate shall no longer be assessed to him. R. S. c. 9, § 21.

When land has been devised it should be taxed to the devisees and not to "the heirs of." "Undivided real estate of a person deceased may be taxed to his heirs without naming them when, and only when, it descends to them by operation of law; and that it may be taxed to devisees without naming them when, and only when, it comes to them by will." 69 Me. 32.

Taxes assessed in conformity with this section are a personal charge against the persons assessed; but to render such persons liable, the tax must be assessed to them. Taxes can be legally assessed only by authority of the state. No statute authorizes the assessment of taxes to the "estate of" the deceased. 76 Me. 551.

The assessors assess real estate to the "James Ulmer Heirs" and later, learning of a will, undertake to make a supplementary assessment of the same real estate and this time to "James Ulmer's Devisees" and suit was brought by the city to enforce the tax against the devisees; the court *Held*, that the assessors had jurisdiction to assess the real estate to the owners either on the original or supplementary assessment, and judgment was

awarded to the city against the defendants for the tax sued for. 87 Me. 359; 95 Me. 168.

Partners in business, whether residing in the same or different towns, may be jointly taxed, under their partnership name, in the town where their business is carried on, for all personal property enumerated in paragraph one of section thirteen, employed in such business; and if they have places of business in two or more towns, they shall be taxed in each town for the portion of property employed therein; except that if any portion of such property is placed, deposited or situated in a town other than where their place of business is, under the circumstances specified in said paragraph, they shall be taxed therefor in such other town; and in such cases they shall be jointly and severally liable for such tax. R. S. c. 9, § 22.

Where it appears that the property taxed by the defendants was the property of the firm and was used in their partnership business, it was held that such property can only be taxed to the firm "in the town where their business is carried on." Where plaintiff was a member of a firm, residing and carrying on a lumber business in Bangor, and also a member of another firm owning a wharf in Brewer, he cannot be taxed in Brewer for his portion of the former firm's lumber piled on the wharf of the latter firm to season, and for which the former firm pays wharfage to the latter. 59 Me. 286.

All real estate, and such as is usually called real, but is made personal by statute, may be taxed to the tenant in possession, or to the owner, whether living in the state or not, in the town where it is; and when a state, county or town tax is assessed on lands owned or claimed to be owned, in common, or in severalty, any person may furnish the collector or treasurer, to whom the tax is to be paid, an accurate description of his part of the land, in severalty, or his interest, in common, and pay his proportion of such tax; and thereupon his land or interest shall be free of all lien created by such tax. R. S. c. 9, § 23; 22 Me. 405; 25 Me. 365; 32 Me. 70; 34 Me. 90; 35 Me. 554; 37 Me. 444; 43 Me. 499; 47 Me. 172, 415; 74 Me. 284.

When assessors continue to assess real estate to the person to whom it was last assessed, such assessment is valid, although the ownership or occupancy has changed, unless previous notice is given of such change, and of the name of the person to whom it has been transferred or surrendered; and a tenant in common, or joint tenant, may be considered sole owner for the purpose of

taxation, unless he notifies the assessors what his interest is. R. S. c. 9, § 24.

M, a non-resident, was owner of real estate which was assessed to her up to the time of her death. The assessors continued to assess taxes on this real estate in her name as a non-resident owner. For non-payment of these taxes the property was sold at tax sale. *Held*, that the taxes assessed to her after her death were void. 95 Me. 165.

The buildings, lands and other property of manufacturing, mining and smelting corporations, made personal by their charters, and not exempt from taxation, and all stock used in factories, shall be taxed to the corporation, or to the persons having possession of their property or stock, in the town or place where the corporations are established, or the stock is manufactured; and the buildings and lands and other property of agricultural and stock raising corporations shall be taxed to the corporation, or to the person having possession of the property, in the towns where the buildings and lands are situated and where the personal property is kept; and there shall be a lien for one year on such property and stock for payment of such tax, and it may be sold for payment thereof, as in other cases; and shares of the capital stock of such corporations shall not be taxed to their owners. R. S. c. 9, § 25.

Cashiers of banks, treasurers of trust and banking and safe deposit companies and clerks or treasurers of other corporations shall ascertain the residences of all stockholders in either; and no dividend shall be paid to any stockholder, whose residence, for the time being, is not entered on the books thereof; and the cashiers of banks, and clerks or treasurers of all corporations holding property liable to be taxed, shall, by the eighth day of April annually, return under oath, to the assessors of each town, in which any of its stockholders reside, the names of such stockholders, the amount of stock owned by them on the first day of such April, and the amount of stock paid into such corporations, and also the value of the real estate, vaults and safe deposit plant, owned by any bank, or trust and banking or safe deposit company which is taxed as other real estate is taxed in the town in which it is located and the amount for which it is valued by the assessors of such municipality for the year previous, and such return shall contain in the body thereof, or by note annexed thereto, an abstract of section thirty-two of chapter nine; and said cashiers of banks, treasurers of trust and banking and safe

deposit companies, and clerks or treasurers of such other corporations shall make like returns to the assessors of the town where such bank, company or other corporation is located or transacts its ordinary business, of all the stock in such bank, company or other corporation not returned to the assessors of other towns in the state. Such returns shall be the basis of taxation on such property, deducting the assessed value of the real estate, vaults and safe deposit plant of any bank, trust and banking or safe deposit company as herein provided. R. S. c. 47, § 24; 65 Me. 379; 82 Me. 189.

If the return required by the provisions of the foregoing section is not made, the assessors in the town where personal property of such corporation is found may assess same, as provided in section twenty-five of chapter nine of the revised statutes.

Tax statutes are to be construed strictly against the state, and especially are they to be so construed as to avoid double taxation unless their language interpreted according to recognized principles of statutory interpretation fairly compels a contrary construction. To tax the shares of a corporation to the shareholders, and to tax at the same the property of the corporation to the corporation itself, imposes in effect, if not in theory, a double tax burden on the shareholders. 103 Me. 418.

The buildings, lands and all other property, real and personal, including all reserve funds, accumulations and undivided profits of corporations organized for the purpose of buying, selling and leasing real estate, shall be taxed to the corporation or the persons having possession of such property, in the place where such land and other property are situated, and there shall be a lien for one year on such property for the payment of such tax, and the same may be sold for payment thereof as in other cases; and shares of the capital stock of such corporations shall not be taxed to the owners thereof. R. S. c. 9, § 26.

All sailing vessels and barges registered or enrolled under the laws of the United States or foreign governments, owned wholly or in part by inhabitants of this state, shall be taxed upon an appraised value of twenty dollars a ton gross tonnage for new vessels and barges completed on or before the first day of April of each year. Vessels or barges one year old or more shall be reduced in value at the rate of one dollar a ton a year for each additional year of age, until they shall have reached the age of seventeen years, at and after which time said vessels and barges shall be taxed upon an appraised value of three dollars a ton,

gross tonnage. The provisions of this section shall not apply to steam barges. R. S. c. 9, § 27.

Vessels and barges when rebuilt shall be taxed on the same valuation as vessels and barges of one-half the age of such rebuilt vessels or barges. A vessel or barge shall be regarded as rebuilt only on an expenditure being made of not less than forty per cent of the cost of such vessel or barge if built entirely new. Vessels and barges if repaired to the extent of twenty-five per cent of the cost of such vessel or barge if built entirely new, shall be taxed upon the same valuation as vessels and barges of five-eighths the age of such repaired vessel or barge. The provisions of this section shall not apply to steam barges. R. S. c. 9, § 28.

All real property in the state owned by any bank incorporated by this state, or by any national bank or banking association, or by any corporation organized under the laws of this state for the purpose of doing a loan, trust or banking business and having a capital divided into shares, shall be taxed in the place where the property is situated, to said bank, banking association or corporation, for state, county and municipal taxes, according to its value, like other real estate; but the stock of such banks, banking associations and other corporations shall be taxed to the owners thereof where they reside, if known to be residents of the state; but taxation of shares in such banks shall not be at a greater rate than is assessed upon other money capital in the hands of citizens. This section does not apply to building and loan associations. R. S. c. 9, § 29; 54 Me. 542; 55 Me. 457; 56 Me. 275; 103 Me. 418.

The claimant of an illegal tax assessed upon bank shares, for the purpose of preventing the seizure and sale of them by the collector, is not a voluntary payment. The right of tax-payers to recover back a tax paid under protest, must be determined by the law as it was when the tax was assessed and paid. 56 Me. 311.

Stock of any bank or other corporation, except a manufacturing corporation, or corporation mentioned in section twenty-six, held by persons out of the state, or unknown, which has not been certified according to section twenty-four of chapter forty-seven, in any town in the state, and is not there assessed; and the stock of any bank or such other corporation appearing by the books thereof to be held by persons residing out of the state, or

whose residence is unknown to the assessors, shall unless exempt be assessed in the town where such bank or other corporation is located, or transacts its ordinary business; and such town has a lien on such stock and all dividends thereon, from the date of such assessment, until such tax and all costs and expenses arising in the collection thereof are paid. No assignment, sale, transfer or attachment passes any property in such stock unless the vendee first pays such tax and cost. R. S. c. 9, § 30; 103 Me. 418.

The cashier or other officer of each bank or other corporation, except a manufacturing corporation or corporation mentioned in section twenty-six, shall exhibit on demand, to the assessors of any town all the books of such bank or other corporation that contain any record of the stock of such bank or other corporation or any dividend, declared or paid thereon, and if requested, shall deliver to them a true and certified copy of so much of said record as they require. If any cashier or other officer neglects or refuses to perform the duties required by this section, the assessors may doom such bank or other corporation in such sum as they deem reasonable, and the assessment shall bind such bank or other corporation and the tax thereon shall not be abated, and for such neglect or refusal, such cashier or other officer forfeits five hundred dollars to be recovered in an action of debt, half to the prosecutor and half to the state. R. S. c. 9, § 31; 103 Me. 418.

When returns of stock in banks and national banking associations and other corporations are made according to the preceding section, or section twenty-four of chapter forty-seven, if it is found by the assessors of any town receiving such returns that the holders of such stock do not reside in such town, they shall within fifteen days return the names of such stockholders, with the amount of stock held by them to the assessors of the town where such stockholders reside, if their residence is known, and within the state; and if not, such return shall be made to the assessors of the town where the bank is located, and shall be subject to section thirty of this chapter. R. S. c. 9, § 32; 103 Me. 418.

The collector of a town, to whom has been committed a tax upon the stock of any bank or other corporation, except a manufacturing corporation or corporation mentioned in section twenty-six, shall, within thirty days after the bills of assessment are delivered to him, cause a written notice to be delivered to the

cashier or president thereof, stating the description of stock taxed, to whom assessed, if stated in the bills, and the tax thereon. No dividend shall be paid on such stock after such notice until the tax and all cost thereon are paid. The cashier or treasurer may pay such tax, and payment shall constitute a charge in offset against any dividend thereon. Should such tax remain unpaid for ninety days after such notice, the collector may sell such stock in the manner specified in sections twenty-four and twenty-five of chapter ten. For the purpose of collecting taxes on bank or other stock, collectors may act in any town. R. S. c. 9, § 33; 103 Me. 418.

Any town treasurer, or his successor in office may maintain an action on the case against any bank, or other corporation, and recover therein the tax assessed if unpaid, and the lawful charges upon any share thereof, if any dividend thereon has been paid after such tax was assessed, provided the notice prescribed in the preceding section has been given; but judgment shall not be rendered in such action for a larger sum in damages than the dividend thus paid, and all such taxes and charges may be recovered in one suit, if said treasurer so elects. R. S. c. 9, § 34; 103 Me. 418.

When any assessors, after completing the assessment of a tax, discover that they have omitted any polls or estate liable to be assessed, they may, during their term of office, by a supplement to the invoice and valuation, and the list of assessments, assess such polls and estate their proportion of such tax according to the principles on which the assessment was made, certifying that they were omitted. Such supplemental assessments shall be committed to the collector with a certificate under the hands of the assessors, stating that they were omitted, and that the powers in their previous warrant, naming the date of it, are extended thereto; and the collector has the same power, and is under the same obligations to collect them, as if they had been contained in the original list; and all assessments shall be valid, notwithstanding that by such supplement the whole amount exceeds the sum to be assessed by more than five per cent, or alters the proportion of tax allowed by law to be assessed on the polls. R. S. c. 9, § 35; 34 Me. 268; 61 Me. 547; 65 Me. 25; 87 Me. 359; 90 Me. 491; 94 Me. 354.

When omissions or errors exist in the records or tax lists of a town or school district, or in returns of warrants for meetings thereof, they shall be amended, on oath, according to the fact,

while in or after he ceases to be in office, by the officer whose duty it was to make them correctly. R. S. c. 4, § 10.

If the certificate of the former clerk is not made under the sanction of an oath, it cannot be deemed an amendment of the record under the provisions of this statute. 102 Me. 418.

When a state tax is ordered by the legislature, the treasurer of state shall forthwith send his warrants directed to assessors of each town or other place, requiring them to assess upon the polls and estates of each, its proportion of such state tax for the current year; and shall in like manner send like warrants for the state tax for the succeeding year, forthwith upon the expiration of one year from the time such tax is so ordered. The tax for each year shall be separately ordered and apportioned; and the amount of such proportion shall be stated in the warrants. R. S. c. 9, § 36; 90 Me. 243.

The treasurer, in his warrant, shall require said assessors to make a fair list of their assessments, setting forth in distinct columns against each person's name, how much he is assessed for a poll, how much for real estate, and how much for personal estate, distinguishing any sum assessed to such person as guardian, or for any estate in his possession as executor, administrator or trustee; to insert in such list the number of acres of land assessed to each non-resident proprietor, and the value at which they have estimated them; to commit such list, when completed and signed by a majority of them, to the collector or constable of such town or other place, with their warrants in due form requiring them to collect and pay the same to the treasurer of such town or other place, at such times as the legislature, in the act authorizing such tax, directed them to be paid; and to return a certificate of the names of such officers and the amount so committed to each, two months at least before the time at which they are required to pay in such tax. R. S. c. 9, § 37.

In the assessment of all state, county, town, plantation, parish or society taxes, assessors shall govern themselves by this chapter, except in parishes and societies where different provision for assessing their taxes is made; and shall assess on the taxable polls therein in accordance with section one of this chapter, such part of the whole sum to be raised as they deem expedient; and the residue of such taxes shall be assessed on the estates according to their value. R. S. c. 9, § 38; 55 Me. 461.

Assessors of towns, plantations, school districts, parishes and religious societies, are not responsible for the assessment of any

tax, which they are by law required to assess; but the liability shall rest solely with the corporation for whose benefit the tax was assessed, and the assessors shall be responsible only for their own personal faithfulness and integrity. R. S. c. 9, § 39; 11 Me. 137; 12 Me. 259; 15 Me. 260; 43 Me. 499; 49 Me. 351; 90 Me. 243.

Property taken to pay an illegal tax may be recovered from the corporation for whose benefit the tax was assessed. 39 Me. 183.

Lands not exempt, and not liable to be assessed in any town, may be taxed by the legislature for a just proportion of all state and county taxes as herein provided for ordering the state and county taxes upon property liable to be assessed in towns. The board of state assessors shall make lists thereof, with as many divisions as will secure equitable taxation, conforming as near as convenient to known divisions and separate ownership and report the same to each successive legislature. R. S. c. 9, § 40.

Such lands may be assessed by the county commissioners according to the last state valuation for a due proportion of county taxes. Lists of such taxes shall immediately be certified and transmitted by the county treasurer to the treasurer of state. In the list, each such township and tract shall be sufficiently described, with the date and amount of assessment on each. The treasurer of state shall, in his books, credit the county treasurer for the amount of each such assessment when collected by him and shall certify and pay to said county treasurer the amount of tax and interest so collected on or before the last day of each April, August and December, and so much of said tax and interest so collected as may be necessary is hereby appropriated to pay the same to the several county treasurers, and the governor and council are hereby authorized to draw their warrants for the same as above provided. R. S. c. 9, § 41; 86 Me. 515.

When the legislature assesses such state tax, the treasurer of state shall, within three months thereafter, cause the lists of such assessments, together with the amounts of county tax on said lands so certified to him, both for the current year, to be advertised for three weeks successively in the state paper, and in some newspaper, if any, printed in the county in which the land lies, and shall cause like advertisement of the lists of such state and county taxes for the following year to be made within three months after one year from such assessment. Said lands

are held to the state for payment of such state and county taxes, with interest thereon at the rate of twenty per cent to commence upon the taxes for the year for which such assessment is made at the expiration of six months and upon the taxes for the following year at the expiration of eighteen months from the date of such assessment. R. S. c. 9, § 42; 86 Me. 515; 95 Me. 418.

Owners of the lands so assessed and advertised may redeem them by paying to the treasurer of state the taxes with interest thereon within one year from the time when such interest commences. Each owner may pay for his interest in any tract whether in common or not and upon filing with the state assessors a certificate showing the number of acres, and describing the property on which he desires to pay the tax and where the same is located, and paying the amount due, shall receive a certificate from the treasurer of state, discharging the tax on the number of acres or interest, upon which such payment is made. Each part or interest of every such township or tract, upon which the state or county taxes so advertised are not paid with interest within the time limited in this section for such redemption, shall be wholly forfeited to the state, and vest therein free of any claim by any former owner. But this section and the five following sections do not apply to taxes upon organized plantations taxed by the state as wild lands. R. S. c. 9, § 43; 26 Me. 219; 36 Me. 336; 43 Me. 312; 46 Me. 518; 95 Me. 418.

Lands thus forfeited shall annually in November be sold by the treasurer of the state at public auction to the highest bidder; but never at a price less than the full amount due thereon for such unpaid state, county and district taxes, interest and cost of advertising except that in case of a sale to the land agent no interest shall be added. Notice of the sale shall be given by publishing a list of the lands to be sold, with the amount of such unpaid taxes, interest and costs on each parcel and the time and place of sale, in the state paper and in some newspaper, if any published in the county in which the lands lie, three weeks successively within three months before the time of sale. The treasurer shall give to the purchaser a deed of such lands, which shall vest in such purchaser title to the same in fee subject to the right of redemption hereinafter provided. Such deed, before delivery, and all releases and certificates given under the provisions of section forty-six, of chapter nine, of the revised statutes, shall be recorded in the land office, with appropriate references thereto on the margin of the record of the original

deed therein recorded. The land agent of the state shall attend such sales, and may, in behalf of the state, bid for the same the amount of such unpaid taxes, and costs. In such case the deed may be made to the inhabitants of the state of Maine and delivered to said land agent. For such deed the land agent shall give his receipt which shall be a sufficient authority for the governor and council to draw their warrant upon the state treasurer for the amount of such taxes, and costs. The proceeds of any tax sales under this act shall be credited by the treasurer of state to the several accounts of state, county and district taxes, interest and costs of advertising. R. S. c. 9, § 44; 60 Me. 270; 68 Me. 317; 86 Me. 515; 95 Me. 418.

The proceedings which work a forfeiture of lands to the state for non-payment of taxes, and the steps in making a sale by the state are to be considered strictly, in a controversy between a purchaser from the state and the original owner. 68 Me. 316.

In the sale of land for non-payment of taxes, the land assessed and sold must be accurately described. 60 Me. 270.

If any such tract is sold for more than the amount due, the surplus shall be held by the state to be paid to the owner, whose right has been so forfeited, upon proof of ownership produced to the governor and council. R. S. c. 9, § 45; 95 Me. 418.

Any owner may redeem his interest in such lands, by paying to the treasurer of state his part of the sums due at any time before sale; or after sale, by paying or tendering to the purchaser, within a year, his proportion of what the purchaser paid therefor at the sale, with interest at the rate of twenty per cent a year from the time of sale, and one dollar for a release; and the purchaser, on reasonable demand, shall execute such release; and if he refuses or neglects, a bill in equity may be maintained to compel him, with costs and any damages occasioned by such refusal or neglect. Or such owner may redeem his interest by paying as aforesaid to the treasurer of state, who, on payment of fifty cents, shall give a certificate thereof; which certificate, recorded in the registry of deeds in the county or district where the lands lie, shall be a release of such interest, and the title thereto shall revert and be held as if no such sale had been made. The governor and council may draw their warrant on the treasurer for any money so paid to him, in favor of the purchaser for whom it was paid, or his legal representatives. R. S. c. 9, § 46; 77 Me. 83; 95 Me. 418.

Land sold by the state for the non-payment of a legal state tax and an illegal county tax does not work a forfeiture of demandant's title to the land. 77 Me. 83.

The printer's bills for advertising such lands shall be divided in each case by the number of townships and tracts advertised, and each shall be charged with its proportion thereof. All amounts of county taxes and interest so received by the treasurer of state, shall be credited by him to the counties to which they belong, and paid to the treasurers thereof. The treasurer of state shall record his doings in every such sale; and a certified copy of such record shall be prima facie evidence, in any court, of the facts therein set forth. He shall give a deed to the purchaser conveying all the interest of the state in the land sold. R. S. c. 9, § 47.

Any owner of lands so assessed by the county commissioners for county taxes, may redeem them by paying to the county treasurer the amount due thereon for such taxes, interest and charges, and depositing with the treasurer of state the county treasurer's certificate of such payment, at any time before the sale. R. S. c. 9, § 48.

The timber and grass on the reserved lands shall be held to the state for the payment of such state and county taxes as may be lawfully assessed against them after April twenty-six, eighteen hundred and ninety-seven, with interest thereon at the rate of twenty per cent a year, to commence upon the taxes for the year in which such assessment is made, at the expiration of one year, and upon the taxes for the following year, at the expiration of two years from the date of such assessment. R. S. c. 9, § 49.

The words "timber and grass," when used in reference to the public lots, so-called, in unincorporated townships in the state, mean all growth of every description on said lots. R. S. c. 1, § 6.

Each owner of timber and grass so assessed may pay the part of the tax so assessed proportioned to his interest in any tract, whether in common or not; and shall receive from the treasurer of state a certificate, discharging the tax upon the interest upon which such payment is made. R. S. c. 9, § 50.

Each fractional part, or interest represented by acreage, in all such reserved lands, upon which the state and county taxes and interest are not paid at the time of the annual land sale in September, shall be forfeited to the state, the same as in the case of lands sold for taxes; but any owner may redeem his interest in such reserved lands by tendering to the treasurer of state, within

one year after the date of the land sale at which said interest was forfeited, his proportional part of all the sums due on the reserved lands in any township, together with interest at twenty per cent a year from the date of the land sale, and one dollar for release. R. S. c. 9, § 51.

If any fractional part or interest represented by acreage in such reserved lands shall not be redeemed as provided in the preceding section, at the expiration of one year from the date of the land sale at which such interest was forfeited, then it shall be and remain wholly forfeited to the state, and shall vest in the state free from all claims by any former owner. R. S. c. 9, § 52.

All timber and grass forfeited under the provisions of the preceding section, shall be held in trust by the state for the benefit of the townships in which such reserved lands lie, and shall be under the control of the land agent, as provided in the case of reserved lands in organized plantations. R. S. c. 9, § 53.

The land agent shall cause a division to be made, if found necessary from time to time, of the reserved lands or public lots which have been partially forfeited, and shall set off and hold the forfeited portions for the benefit of townships in which they lie, as provided in the preceding section. R. S. c. 9, § 54.

After such timber and grass shall be wholly forfeited to the state, the treasurer of state shall charge all taxes due from such interests as are forfeited, to the several townships in which they lie, to be deducted from such moneys as may be payable to said townships in the future, from the sale of stumpage by the land agent. R. S. c. 9, § 55.

When a road is laid over lands under section forty-three, of chapter twenty-three, the county commissioners shall at their first regular session thereafter assess thereon and on adjoining townships benefitted thereby, such an amount as they judge necessary for making, opening and paying expenses attending it; and such assessment shall create a lien thereon for the payment thereof; and they may make as many divisions as are equitable, conforming as nearly as is convenient to known divisions and separate ownerships, and may assess upon each a sum proportional to the value thereof and the benefits likely to result to the same by the establishment of the road; when such assessment would be unreasonably burdensome to such owners, they shall assess an equitable sum on the county and the balance only on such land. Any person aggrieved by an assessment may appeal to the supreme judicial court at the term thereof first held after such assess-

ment; and the presiding judge at that term shall, on hearing the case, determine what part of said assessment shall be paid by the owners of the tract or township, and what part, if any, by the county, and there shall be no appeal from such decision. They shall, at the same time, fix the time for making and opening such road, not exceeding two years from the date of the assessment, and appoint an agent or agents, not members of their board, to superintend the same, who shall give bond to the treasurer of the county, with sureties approved by them, to expend the money faithfully, and to render account thereof on demand; and they shall publish a list of the townships and tracts of land so assessed, with the sum assessed on each, and the time in which the road is to be made and opened, in the state paper, and in some paper, if any, printed in the county where the lands lie, three weeks successively, the last publication to be within three months from the date of the assessment. R. S. c. 9, § 56; 17 Me. 198; 27 Me. 294; 29 Me. 201; 30 Me. 352; 33 Me. 458; 46 Me. 346; 72 Me. 248; 80 Me. 285; 83 Me. 517, 521.

(NOTE: Revised statutes, chapter twenty-three, sections forty-three to forty-seven, relate to the laying out, altering and discontinuing of ways in unincorporated places.)

“The county commissioners shall at their first regular session,” etc. *Held*, that the assessments are to be made at the same regular session at which the location of the road is filed; the object of the statute being to prevent their being made at an adjourned term of said regular session. 83 Me. 515.

If the owners make and open such road to the acceptance of the commissioners, after an actual examination by one or more of their board, within said time, the assessment shall thereby be discharged; otherwise it shall be enforced as hereinafter provided, and the agents shall proceed immediately to make and open it. R. S. c. 9, § 57.

Said county commissioners, in September, annually, by one or more of their board, shall make an inspection of all county roads and other roads originally located as town roads in the unincorporated townships and tracts of land in their counties, and shall thereupon make an estimate of the amount needed to put them in repair, so as to be safe and convenient for public travel, and assess thereon not exceeding two per cent of the valuation thereof, and shall assess on the county the balance of said amount if said assessment of two per cent is not sufficient to properly repair said roads; and they shall make as many divisions as are

equitable, conforming as nearly as is convenient to known divisions and separate ownerships, and shall assess upon each a sum proportionate to the value thereof; and cause so much thereof as they deem necessary for the purpose aforesaid, to be expended on said roads within one year thereafter, which assessment shall create a lien thereon for the payment thereof. They shall make such assessment by the first day of each January, and at the same time appoint an agent or agents, skilled in road-building, not members of their board, to superintend the expenditure thereof, who shall give bonds as provided in section fifty-six; and they shall publish a list of townships and tracts of land so assessed, with the sums so assessed on each, and the roads on which it is to be expended, in some paper printed in the county where the lands lie, three weeks successively, the last publication to be within three months from the date of the assessment. R. S. c. 9, § 58; 63 Me. 568; 87 Me. 503.

When a county road exists within the limits of an unincorporated township, the whole township is liable to be taxed to put it in repair. That for the purposes of such taxation the township is a unit, and cannot be regarded as composed of two distinct tracts of land simply because there are two separate and distinct sets of owners. The words "tracts of lands" are used to designate islands, gores, and other fragments not included in a township; they were not intended to apply to any portion of the land within a regularly located township. 63 Me. 568.

If any owner fails to pay the sum so assessed on his land, for the expenses of making and opening such new roads, within two months from the time fixed therefor as provided in section fifty-seven or fails within two months after the fifteenth day of each June, to pay his assessment for repairing roads, as provided in the two preceding sections, the county treasurer shall proceed to sell the lands so assessed, by advertising the lists of unpaid taxes, with the date of assessment and the time and place of sale, in the state paper, and in some paper, if any, printed in the county where the lands lie, three weeks successively, the last publication to be at least thirty days before the time of sale. No bid shall be received at such sale for less than the amount due for the tax, costs and interest at twenty per cent a year from the time prescribed for the payment of said tax; and the treasurer shall sell so much of said land as is necessary to pay the unpaid tax, costs and interest as aforesaid, and give a deed thereof to the purchaser, if any; and if no one becomes a purchaser at such sale it shall be forfeited to the county; and such owner or part

owner or tenant in common, may redeem his interest therein at any time within two years from the sale or forfeiture, by paying to the purchaser or the county the sum for which it was sold or forfeited, with interest at twenty per cent a year, and any sums subsequently paid for state and county taxes thereon. Any owner of lands so sold, shall receive his share in any overplus of the proceeds of such sale, on exhibiting to the treasurer satisfactory evidence of his title. In addition to the foregoing method for the collection of highway taxes, the county commissioners of any county may, in writing, at any time subsequent to that when the lands so assessed might be sold for non-payment of the taxes assessed thereon, direct the treasurer of such county to commence an action of debt in the name of the inhabitants of said county, against the party liable to pay such taxes. But no such defendant shall be liable for any costs of suit in such action unless it appears by the declaration and proof, that payment of said tax has been duly demanded by said treasurer before the suit was commenced. R. S. c. 9, § 60; 27 Me. 294; 30 Me. 352; 33 Me. 458; 69 Me. 349; 74 Me. 55.

In the sale of land for failure to pay a tax assessed, it should appear that an effort was made to obtain the amount of the tax and charges by a sale of some fractional part of the land less than the whole. If it does not so appear, the error is fatal and renders the deed void. 74 Me. 55.

At common law no lapse of time will afford presumptive evidence of the regularity of a tax sale. The recitals in a tax deed more than thirty years old are evidence of the facts recited, only when the grantee takes and holds possession of the premises under the deed. Where there was no such possession, the burden is upon the grantee, in such deed, to show that, in the sale under a tax assessed, the officer complied with the statutes. 69 Me. 348; 33 Me. 457.

The recitals in the treasurer's deed are not conclusive, as evidence of the facts therein stated. A sale, made under the authority of the statute, was not rendered void by the fact, that it did not bring price enough to pay the whole assessment; nor by the fact that the assessing officers, in computing the number of acres to be assessed, excluded that portion of the tract, which was covered by water. 33 Me. 457.

In any trial at law or in equity involving the validity of any sale or forfeiture of such lands, as provided in the preceding section, it shall be *prima facie* proof of title for the party claim-

ing under it, to produce in evidence the county treasurer's deed, duly executed and recorded, the assessments signed by the county commissioners and certified by them or their clerk to the county treasurer, and to prove that the county treasurer complied with the requirements of law in advertising and selling. R. S. c. 9, § 61; 27 Me. 293; 101 Me. 232.

A *prima facie* title in a party claiming under a tax sale for non-payment of road taxes assessed upon lands in unincorporated places is made out by producing in evidence the county treasurer's deed duly executed and recorded, the assessment signed by the county commissioners and certified by them or their clerk to the county treasurer, and by proving that the county treasurer complied with the requirements of law in advertising and selling. 101 Me. 233.

County commissioners, in case of sudden injury to county roads and bridges in unincorporated townships and tracts of land in their counties, or where said roads and bridges are rendered impassable by snow, may cause them to be repaired or made passable forthwith, or as soon as they deem necessary, and may appoint an agent or agents not members of their own board, to superintend the expenditure therefor, who shall give bond as required in section fifty-six, if required, the whole expense whereof shall be added to their next assessment on said lands for repairs, authorized by section fifty-eight, which assessment shall create a lien upon said lands for the whole amount thereof as effectually as is now provided in relation to repairs on such county roads. That portion of said assessment which is for repairs of sudden injuries as aforesaid, shall be set down, in the assessment, in distinct items in a separate column, and shall not be discharged, under section fifty-nine, but shall be enforced as is provided in section sixty. R. S. c. 9, § 62.

Purchasers of land sold for non-payment of state and county taxes, and assessments for opening, making and repairing roads, have no claim against the state or county for any defect in the title under such sale, notwithstanding any irregularities in the proceedings, or failure to comply with the law under which the sales were made. Deeds given pursuant to sales made for non-payment of state and county taxes, vest in the grantee the title of the state, or of the county, to the lands sold, subject to the conditions of sale, and no more. R. S. c. 9, § 63; 34 Me. 269.

When a collector of taxes makes sale of lands assessed in a town for a sufficient amount to pay the taxes and expenses, and

receives that amount from the purchaser, all further claim upon the lands or the owner of them for those taxes, is extinguished, whether the title conveyed to the purchaser be or be not a legal one. The town can only claim payment from its collector to whom the taxes have been committed for collection. Its connection with the sale and its proceedings ceases. It cannot be permitted to collect those taxes again upon the ground, that its collector was not legally chosen or qualified. The risk respecting the title and proceedings rests upon the collector and purchaser. The town assumes no part of the risk, and does not become responsible for the goodness of the title conveyed to the purchaser, who must rely upon the covenants contained in the deed of the collector. 34 Me. 269.

Any person having a legal interest in a tract so advertised, sold or forfeited, may redeem his interest by paying within the times prescribed, the amount so required to discharge the claim thereon. The rate of interest upon unpaid state and county taxes, and taxes assessed by county commissioners for opening, making and repairing roads, shall be twenty per cent a year, commencing at the expiration of one year from the date of the assessments, except when otherwise provided. R. S. c. 6, § 64.

When the state has taxed wild land, and the treasurer of state has conveyed it, or part of it, for non-payment of tax, by deed purporting to convey the interest of the state by forfeiture for such non-payment and his record shows that the grantee, his heirs or assigns, has paid the state and county taxes thereon, or on his acres or interest therein as stated in the deed, continuously for the twenty years subsequent to such deed; and when a person claims under a recorded deed describing wild land taxed by the state, and the record of the treasurer of state shows that he has, by himself or by his predecessors under such deed, paid the state and county taxes thereon, or on his acres or interest therein as stated in the deed, continuously for twenty years subsequent to recording such deed; and whenever, in either case, it appears that the person claiming under such a deed, and those under whom he claims, have, during such period, held such exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of wild lands in this state, and it further appears that during such period, no former owner, or person claiming under him, has paid any such tax, or any assessment by the county commissioners, or done any other act indicative of ownership, no action shall be maintained by a

former owner, or those claiming under him, to recover such land, or to avoid such deed, unless commenced within said twenty years. Such payment shall give such grantee or person claiming as aforesaid, his heirs or assigns, a right of entry and seizin in the whole, or such part, in common and undivided, of the whole tract as the deed states, or as the number of acres in the deed is to the number of acres assessed. R. S. c. 6, § 65; 99 Me. 268; 102 Me. 222.

If any such former owner, or person claiming under him, during said period of twenty years, or any portion thereof, is a minor, insane, imprisoned or absent from the United States he may, if otherwise entitled, bring such action at any time within ten years after such disability is removed, notwithstanding said period of twenty years has expired. And if such person dies during the continuance of the disability, and no determination or judgment has been had on his title or right of action, such action may be brought by his heirs, or other person claiming under him, at any time within ten years after his death, notwithstanding the twenty years have elapsed. R. S. c. 6, § 66; 98 Me. 268.

The two preceding sections shall not apply to actions between co-tenants, nor to actions pending in court on April twenty-seven, eighteen hundred ninety-five, nor to those commenced before January one, nineteen hundred. R. S. c. 6, § 67.

When a state tax is imposed and required to be assessed by the proper officers of towns, the treasurer of state shall send such warrants as he is, from time to time, ordered to issue for the assessment thereof, to the assessors requiring them forthwith to assess the sum apportioned to their town or place, and to commit their assessment to the constable or collector for collection. R. S. c. 9, § 68.

In order to assess a county tax, county commissioners, at their regular session next before the first day of each January in which the legislature meets, shall prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for one year from said day, including the building and repairing of jails, courthouses and appurtenances, with the debts owed by their counties, and like estimates for the succeeding year, and the county tax for both said years shall be granted by the legislature separately at the same session. R. S. c. 9, § 69.

Said estimates shall be recorded by their clerk in a book; and a copy thereof shall be signed by the chairman of the county commissioners, and attested by their clerk, who shall transmit it to the office of the secretary of state, on or before the first day of each January in which the legislature meets, to be by him laid before the legislature. R. S. c. 9, § 70.

He [county treasurer] shall, annually, prepare and deliver his account as treasurer to the close of every year, to the clerk of the county commissioners, to be by him enclosed with the estimates for county taxes made by said commissioners, and transmitted to the secretary of state. R. S. c. 12, § 13.

When a county tax is authorized, the county commissioners shall in March, in the year for which such tax is granted, apportion it upon the towns and other places according to the last state valuation; they may add such sum above the sum so authorized, not exceeding two per cent of said sum, as a fractional division renders convenient, and certify that fact in the record of said apportionment, and issue their warrant to the assessors requiring them forthwith to assess the sum apportioned to their town or place, and to commit their assessment to the constable or collector for collection. R. S. c. 9, § 71.

No assessment of a tax by a town or parish is legal, unless the sum assessed is raised by vote of the voters, at a meeting legally called and notified. R. S. c. 9, § 72.

A city tax is invalid when the resolve raising it by the city council has not been legally passed or approved by the mayor as required by the city charter. 86 Me. 533.

In an action of debt to recover state, county and city taxes assessed in *solido*, it is no defence to the city for the unpaid part of the state and county taxes, that the city taxes, included in such assessment is invalid. 86 Me. 533.

Before making an assessment, the assessors shall give seasonable notice in writing to the inhabitants, by posting notifications in some public place in the town, or shall notify them, in such other way as the town at its annual meeting directs, to make and bring in to them true and perfect lists of their polls and all their estates real and personal, not by law exempt from taxation, of which they were possessed on the first day of April of the same year. R. S. c. 9, § 73; 3 Me. 300; 57 Me. 278; 66 Me. 387; 68 Me. 352, 356; 76 Me. 461; 85 Me. 330; 90 Me. 491; 102 Me. 140.

Form of Assessors' Notice.

The assessors of the town of — hereby give notice to all persons liable to taxation in said town, that they will be in session at — in said town, on the — of April, at — [state time], for the purpose of receiving lists of the polls and estates taxable in said town.

All such persons are hereby notified to make and bring to said assessors true and perfect lists of their polls and all their estates, real and personal, not by law exempt from taxation, which they were possessed of, or which they held as guardian, executor, administrator, trustee or otherwise, on the first day of April, 19—, and be prepared to make oath to the truth of the same.

When estates of persons deceased have been divided during the past year, or have changed hands from any cause, the executor, administrator or other persons interested, are hereby warned to give notice of such change, and in default of such notice will be held under the law to pay the tax assessed although such estate has been wholly distributed and paid over.

Any person who neglects to comply with this notice will be DOOMED to a tax according to the laws of the state and be barred of the right to make application to the assessors or county commissioners for any abatement of his taxes, unless he offers such list with his application and satisfies them that he was unable to offer it at the time hereby appointed.

Date posted, —, 19—.

_____, }
 _____, } *Assessors.*
 _____, }

Form of Schedule of Real and Personal Estate.**SCHEDULE**

Of all the personal property and real estate of —, of —, for the taxable year 19—, and also of all personal property held by him as administrator, executor, trustee or guardian.

PERSONAL PROPERTY.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Money at interest, secured and unsecured, or debts due me more than I am owing, ... 2. Cash on hand or on deposit to my credit April 1st, but not in a savings bank, ... 3. Shares in any banks within this state, and shares in moneyed and other corporations within or without this state, ... 4. Public stocks and securities, including the stock, scrip, or notes, of any corporation, state, county, city or town, and bonds of railroads and other corporations, . . . 5. Annuities, the capital producing which is not taxed in this state, ... | |
|---|--|

6. Goods, wares and merchandise, wheresoever they may be, including carriages, vehicles, bicycles, and automobiles,
7. Horses and other live stock more than six months old owned or kept by me in this town; or in any other town for pasturing or any other temporary purpose, April 1st, ...
8. Stock by me employed in trade, or in the erection of buildings or vessels, or in the mechanic arts, in this town April 1st, ...
9. Vessels and parts of vessels, whether at home or abroad, including all in which I have any claim, directly or indirectly, ...
10. Household furniture, exceeding two hundred dollars in value, ...
11. Musical instruments, exceeding fifty dollars in value,
12. I singly or jointly with others, hold personal property in trust, as administrator, executor, guardian or trustee for —, to the amount of
13. Personal property or an interest therein, other than that enumerated in this schedule, is held for me by —, as trustee, or otherwise, to the amount of
14. I hold other property not in this schedule and not exempt from taxation to amount of

The attention of the recipient of this schedule is called to the following provisions of the statutes.

Section 73, Chapter 9, R. S.—Before making an assessment, the assessors shall give seasonable notice in writing to the inhabitants, by posting notifications in some public place in the town, or shall notify them, in such other way as the town at its annual meeting directs, to make and bring in to them true and perfect lists of their polls and all their estates, real and personal, not by law exempt from taxation, of which they were possessed on the first day of April of the same year.

Section 74, Chapter 9, R. S.—If any resident owner, after such notice, does not bring in such list, the assessors shall ascertain otherwise, as nearly as may be, the nature, amount and value of the estate, real and personal, for which in their judgment he is liable to be taxed, and he is thereby barred of his right to make application to the assessors or the county commissioners for any abatement of his taxes, unless he offers such list with his application and satisfies them that he was unable to offer it at the time appointed.

Section 75, Chapter 9, R. S.—The assessors, or either of them, may require the person presenting such list to make oath to its truth, which oath either

of them may administer, and either of them may require him to answer all proper inquiries in writing as to the nature, situation and value of his property liable to be taxed in the state, and a refusal or neglect to answer such inquiries and subscribe the same, bars an appeal to the county commissioners, but such list and answers shall not be conclusive upon the assessors.

DESCRIPTION OF REAL ESTATE.

Farms or other lands, what buildings thereon, whole number of acres, how bounded, number of acres of mowing and tillage, of pasturing, wood and timber.

House lots, size, how bounded, on what street or road situated, what buildings thereon.

Interest by contract or otherwise in land exempt from taxation.

The foregoing schedule has been computed in the lawful money of the United States, and comprises all the personal property of every kind and nature, within or without the State of Maine, and all claims for property, and all real estate owned or held by — subject to taxation by the assessors of the — of —, under the laws of the State of Maine, and to the best of my knowledge and belief is full, true and correct.

_____.

_____, ss.

_____, A. D. 19—.

The above named — personally appeared, and made oath that the above statement subscribed by him is true.

Before me,

_____, Assessor.

An answer must be written against each item of the above blank.

Electors living on islands adjacent to the mainland along the coast of the state and within the jurisdiction thereof, but not incorporated with any town, and all such electors living in other unorganized places may furnish lists of their polls and estates to the assessors of any adjacent town, on or before the first day of each April, and said assessors shall assess state and county taxes upon all such persons, and they shall be collected in the same manner and by the same officers as if such electors were inhabitants of such town. R. S. c. 6, § 75; 90 Me. 374.

Any person, association or corporation having in its employ more than twenty-five men in any one town or city in the state shall upon the written request of the chairman of the board of assessors of that town or city, furnish to said board a complete list of the names of all men in its employ in said town or city on the first day of the preceding April; said list shall be furnished within ten days from the date of said request and neglect or refusal to comply with the provisions of this act shall subject said person, association or corporation to a penalty of fifty dol-

lars to be recovered on an action of debt for the benefit of such town, said action of debt shall be brought by the treasurer of said town or city in his name upon request of the assessors. P. L. of 1907, c. 141.

The statute provides that "the personal property of deceased persons in the hands of their executors or administrators not distributed, shall be assessed to the executors or administrators. An executor or administrator becomes personally liable for a tax so assessed and a suit may be brought against them personally, and not against the property of the deceased in their hands. But the tax must be assessed against such executor or administrator to render them personally liable. 90 Me. 490.

Water pipes, hydrants and conduits of a water company laid through the streets of a city or town, are taxable as real estate to the company in possession of them, under our statute, in the city or town where they are laid. 85 Me. 330.

An action may be maintained by a town against a tax-payer to recover the amount of his tax without proof that the assessors gave notice to the inhabitants to bring in their lists of taxable property. 68 Me. 351.

No person is entitled to apply to the county commissioners for an abatement of his tax, unless, after due notice, he brought into the assessors a true and perfect list of his taxable estate, or makes it appear to the commissioners that he was unable to do so. 66 Me. 487.

If any resident owner after such notice does not bring in such list, the assessors shall ascertain otherwise as nearly as may be, the nature, amount and value of the estate, real and personal, for which in their judgment he is liable to be taxed, and he is thereby barred of his right to make application to the assessors or the county commissioners for any abatement of his taxes, unless he offers such list with his application and satisfies them that he was unable to offer it at the time appointed. R. S. c. 9, § 74; 37 Me. 562; 53 Me. 507; 57 Me. 280; 66 Me. 176, 387; 68 Me. 353, 356; 76 Me. 461, 467; 81 Me. 310; 90 Me. 490; 102 Me. 140.

If a resident owner does not furnish the assessors such list, a writ of mandamus should not be issued to compel them to act upon an application for an abatement of a tax. 102 Me. 141.

"A true and perfect list" of taxable estates comprises a true enumeration, description and specification only of property not

exempt from taxation; no appraisement or estimation of its value being essential. 76 Me. 460.

An action may be maintained by a town against a tax-payer to recover the amount of his tax without proof that the assessors gave notice to the inhabitants of the town to bring in their lists of taxable property. 68 Me. 351.

The assessors or either of them may require the person presenting such list to make oath to its truth, which oath either of them may administer, and either of them may require him to answer all proper inquiries in writing as to the nature, situation and value of his property liable to be taxed in the state, and a refusal or neglect to answer such inquiries and subscribe the same, bars an appeal to the county commissioners, but such list and answers shall not be conclusive upon the assessors. R. S. c. 9, § 75; 53 Me. 507; 57 Me. 278; 66 Me. 176; 67 Me. 436; 76 Me. 467.

If a person, who has, upon due notice, presented to the assessors true and perfect lists of his polls, and of his estates, real and personal, not exempt from taxation, etc., refuses to answer all proper inquiries in relation to the nature, situation and value of his property, and, if required, to subscribe and make oath to the same, he is thereby barred from applying to the county commissioners for any abatement of his taxes. 53 Me. 505.

The assessors for the time being, on written application, stating the grounds therefor, within two years from the assessment, may make such reasonable abatement as they think proper. If after two years from the date of assessment a collector is satisfied that a poll tax or tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay, he shall notify the assessors thereof in writing under oath, stating the reason why such tax cannot be collected. The assessors, after due inquiry, may abate such tax or any part thereof, and shall certify such abatement in writing to the collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated. They shall keep in suitable book form, a record of such abatements, with the reasons for each, and report the same to the town at its annual meeting, and to the mayor and aldermen of cities, by the first Monday in each March. R. S. c. 9, § 76; 19

Me. 330 ; 33 Me. 446 ; 57 Me. 280 ; 67 Me. 435 ; 76 Me. 467 ; 77 Me. 410 ; 102 Me. 140.

A town at its annual meeting may authorize its assessors to abate not exceeding three dollars of the tax of any person, upon proof that he has owned and used on the ways during that year cart wheels having felloes not less than six inches wide. And they shall abate three dollars from the tax of any inhabitant, who shall construct, and during the year keep in repair a watering trough beside the highway, well supplied with water, the surface of which shall be two and a half feet or more above the level of the ground, and easily accessible for horses and carriages, if the assessors think such watering trough for the public convenience. If more than one person in the same locality claims to furnish it, the municipal officers shall decide where it shall be located. R. S. c. 23, § 74 ; 57 Me. 539 ; 67 Me. 138.

To justify an omission to present the lists required by section seventy-three of this chapter, the applicant for abatement must show that he was unable to offer it at the time appointed. 102 Me. 141.

An order drawn by the selectmen in favor of the collector for certain abatement of taxes, is not to be considered an abatement which is to enure to the benefit of those named in the order, they not being parties to the drawing of the same ; but is a mere order to the treasurer to release the collector in his settlement with him from accounting for the several sums specified in such order. 19 Me. 332.

Form of Application to Assessors for Abatement of Taxes.

To the assessors of the town of ———, in the county of ———.

I, A. B., of said town of ———, respectfully represent that the valuation of my personal and real estate and assessment of taxes on the same, in said town, as taken and made by the assessors of said town, for the year 19—, are as follows, viz.: Valuation of personal estate, ——— dollars; real estate, ——— dollars. Highway tax assessed against me on personal estate, ——— dollars; on real estate, ——— dollars. Money tax assessed against me on personal estate, ——— dollars; on real estate, ——— dollars. I, the said A. B., hereby respectfully make application to you, the said assessors, for a just and proper abatement of the above taxes, for the following reasons, viz.: First, because on the first day of April, A. D. 19—, I did not have, possess or own exceeding ——— dollars, taxable personal estate, nor exceeding ——— dollars, taxable real estate; that my personal and real estate are overrated; that I did, on said first day of April, present and exhibit on oath to the assessors of said ———, as by law required, a true and perfect list of my poll

and taxable estate, real and personal, of which I was possessed on said first day of April, 19—. [*If the list was not offered on the first day of April, assign reason and say*] that I was unable on the said first day of April, 19—, on account of my own sickness, or absence from the state (as the case may be) to be personally present to present and exhibit to said assessors for said year 19—, on oath, a true and perfect list of my poll and estate, real and personal, not by law exempt from taxation.

Dated at said —, this — day of —, 19—.

A. B.

Form of Application to County Commissioners for Abatement of Taxes.

To the honorable county commissioners within and for the county of —.

Respectfully represents A. B., of —, in said county, that his personal estate in the town of —, aforesaid, was valued in the valuation taken by the assessors of said town for the assessment of taxes for the year 19—, at the sum of — dollars, and his real estate at the sum of — dollars, and the assessors aforesaid, for said year, assessed your petitioner on account of said personal estate in the sum of — dollars and — cents, and on account of real estate in the sum of — dollars and — cents, in their assessment of money taxes for said year, and in their assessment of highway taxes for said year, assessed your petitioner on account of his personal estate in the sum of — dollars and — cents, and on account of real estate in the sum of — dollars and — cents.

And your petitioner further represents that, in compliance with a notice duly posted by said assessors, he did, on the first day of April, in the same year, present and exhibit on oath to the said assessors, a true and perfect list of his poll and estate, real and personal, not by law exempted from taxation, which he was then possessed of, and said assessors disregarded said list in assessing his proportion of the taxes in said town for said year 19—. [*If the list was not offered on the first day of April, say*] that I was unable on the first day of April, 19—, on account of my own sickness, or absence from the state (as the fact may be), to be present to present and exhibit to said assessors for said year 19—, a true and perfect list of my poll and estate, real and personal, not by law exempt from taxation.

And your petitioner further represents that on the first day of April, 19—, he did not have, own or possess exceeding — dollars taxable real estate, as his said list as aforesaid exhibited will show and as in truth will appear.

And your petitioner further represents, that believing that property should never be appraised above its actual value, and that no tax-payer should be overrated, he has requested the assessors of said town to abate said taxes, viz.: On the — day of —, 19—, informing them that he was overrated and did not possess on the said first day of April, 19—, exceeding — dollars in value of personal estate, nor exceeding — dollars in value of real estate, yet they refused to abate the said taxes or any part thereof.

Your petitioner, feeling himself aggrieved and wronged by said refusal and decision, appeals and applies to this honorable court, pursuant to the statute in such case made and provided. He therefore prays your honors, after due notice to the assessors of said town and hearing the evidence, and upon being satisfied that your petitioner was overrated in said assessments, to abate said taxes or such part thereof as justice requires, and cause him to be relieved and paid out of the treasury of said town the amount of such abatements, with incidental charges, in accordance with the provisions of said statute, and as in duty bound will ever pray.

A. B.

Dated at said —, this — day of —, 19—.

They shall give to any person applying to them for an abatement of taxes, notice in writing of their decision upon such application within ten days after they take final action thereon. R. S. c. 9, § 77; 99 Me. 263; 102 Me. 140.

If they refuse to make the abatement asked for, the applicant may apply to the county commissioners at their next meeting, and if they think that he is overrated, he shall be relieved by them, and be reimbursed out of the town treasury the amount of their abatement, with incidental charges. The commissioners may require the assessors or town clerk to produce the valuation, by which the assessment was made, or a copy of it. If the applicant fails, the commissioners shall allow costs to the town, taxed as in a suit in the supreme judicial court, and issue their warrant of distress for collection thereof against him, either party may appeal from the decision of said county commissioners, to the supreme judicial court, under the same conditions that an appeal lies from the assessors to the supreme judicial court. R. S. c. 9, § 78; 33 Me. 446; 57 Me. 280; 66 Me. 225; 67 Me. 435; 76 Me. 467; 77 Me. 410; 99 Me. 263; 102 Me. 140.

“Overrated” means overrated with reference to the fair value of the property in question, and not, by comparison with the valuation placed upon some other specific piece of property in town. 99 Me. 263.

If an appellant’s property has been rated at no more than its true value, evidence tending to show merely a disproportionate valuation by comparison with the valuation placed upon other property is irrelevant. 99 Me. 263.

The assessment is not vacated by an appeal. The assessment stands and the burden is upon the appellant to show that he is entitled to relief, by way of an abatement of the tax. 99 Me. 263.

Any person entitled to make a complaint to the county commissioners for an abatement of his taxes may, if he so elect, appeal under the same terms and conditions from the decision of the assessors to the supreme judicial court for the county in which the city or town, in which the property of such person is assessed, is situated. R. S. c. 9, § 79; 99 Me. 263; 102 Me. 140, 401.

All appeals to the supreme judicial court under the provisions of section seventy-nine of chapter nine of the revised statutes, may be referred by the court to the board of state assessors, who shall hear the parties and report their findings to the court together with a transcript of the evidence. Such report shall be prima facie evidence of the facts thereby found. P. L. of 1909, c. 220, § 10.

Such appeal shall be entered at the term first occurring not less than thirty days after the assessors shall have given to the appellant, notice in writing of their decision upon his application for such abatement, and notice thereon shall be ordered by said court in term time or by any justice thereof in vacation, and said appeal shall be tried, heard and determined by the court without a jury in the manner and with the rights provided by law in other civil cases so heard. R. S. c. 9, § 80; 102 Me. 401.

If upon such trial it appears that the appellant has complied with all provisions of law he may be granted such abatement as said court may deem reasonable, under the same circumstances as an abatement may be granted by the county commissioners. If no abatement is granted, judgment shall be rendered in favor of the city or town, and for its costs, to be taxed by the court. If an abatement is granted, judgment shall be rendered in favor of the city or town for such amount, if any, as may be due, after deducting the abatement, and the court may make such order relating to the payment of costs as justice shall require. In either case execution shall issue. The lien created by statute on real estate to secure the payment of taxes shall be continued for thirty days after the rendition of judgment, and may be enforced by sale of said real estate on execution, in the same manner as attachable real estate may be sold under the provisions of section thirty-two, chapter seventy-eight, and with the same right of redemption. Claims for abatement on several parcels of real estate may be embraced in one appeal, but judgment shall be rendered, and execution shall issue, for the amount of taxes due on each several parcel. The final judgment of the

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court shall be forthwith certified by the clerk to the assessors of the town or city where such tax was assessed, and such assessors shall in all cases carry into full effect the judgment of the appellate court in the same manner as if made by themselves. If it shall be alleged in the application that the applicant has paid the taxes for which he has been assessed, and if the court shall so find, judgment for the amount of the abatement granted shall be rendered against the city or town, and execution therefor, and for such costs as may be awarded, shall issue as in civil actions. R. S. c. 9, § 81; 99 Me. 263; 102 Me. 401.

* * * Such seizure and sale pass to the purchaser, all the right, title and interest that the execution debtor has in such real estate at the time of such seizure * * * subject to the debtor's right of redemption. * * * R. S. c. 78, § 32.

Such appeal shall be tried at the term to which the notice is returnable, unless delay shall be granted at the request of such city or town for good cause; and said court shall, if requested by such city or town, advance the case upon the docket so that it may be tried and decided with as little delay as possible. Either party may file exceptions to the decisions and rulings of the court upon matters of law arising upon the trial, in the same manner and with the same effect as is allowed in the supreme judicial court in the trial of cases without a jury. R. S. c. 9, § 82.

The court may in its discretion appoint a commissioner to hear the parties and to report to the court the facts, or the facts with the evidence. Such reports shall be prima facie evidence of the facts thereby found. The fees of the commissioner shall be paid in the same manner as those of auditors appointed by the court. R. S. c. 9, § 83.

The assessors shall assess upon the polls and estates in their town all town taxes and their due proportion of any state or county tax, according to the rules in the latest act for raising a state tax, and in this chapter; make perfect lists thereof under their hands; and commit the same to the constable or collector of their town, if any, otherwise to the sheriff of the county or his deputy, with a warrant under their hands, in the form hereinafter prescribed. R. S. c. 9, § 84; 4 Me. 75; 51 Me. 599; 52 Me. 589; 58 Me. 417, 532; 64 Me. 190; 71 Me. 182; 82 Me. 194; 87 Me. 121; 93 Me. 178; 94 Me. 356.

They may add their proportion of the state and county tax to any of their other taxes, and make one warrant and their certificates accordingly. R. S. c. 9, § 85; 71 Me. 183; 93 Me. 178.

They may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding five per cent thereof, as a fractional division renders convenient, and certify that fact to their town treasurer. R. S. c. 9, § 86; 83 Me. 533; 93 Me. 178.

They shall make a record of their assessment and of the invoice and valuation from which it was made; and before the taxes are committed to the officer for collection, they shall deposit it, or a copy of it, in the assessors' office, if any, otherwise with the town clerk, there to remain; and any place, where the assessors usually meet to transact business and keep their papers or books, shall be considered their office. R. S. c. 9, § 87; 58 Me. 529; 71 Me. 183; 87 Me. 122; 93 Me. 178; 94 Me. 356; 102 Me. 414.

When they have assessed any county tax and committed it to the officer for collection, they shall return to the county treasurer a certificate thereof with the name of such officer. When they have so assessed and committed a state tax, they shall return a like certificate to the treasurer of state; and if this is not done, and any part of such tax remains unpaid for sixty days after the time fixed for its payment, the treasurer of state shall issue his warrant to the sheriff or his deputy to collect the sum unpaid of the inhabitants of the town or place. R. S. c. 9, § 88.

If any town does not choose assessors, or if so many of them refuse to accept, that there are not such a number as the town voted to have, the selectmen shall be the assessors, and each of them shall be sworn as an assessor, and each selectman and assessor shall be paid for his services two dollars for every day necessarily and actually employed in the services of the town. Towns having three thousand or more inhabitants may vote to pay their selectmen a compensation not exceeding five dollars a day for time actually spent in the service of the town. R. S. c. 9, § 89; 51 Me. 600; 55 Me. 503; 61 Me. 546; 75 Me. 298; 76 Me. 416; 78 Me. 569; 87 Me. 221.

Any town neglecting to choose selectmen or assessors, forfeits to the state not exceeding three hundred, nor less than one hundred dollars, as the supreme judicial court orders. R. S. c. 9, § 90.

In such case, and when the selectmen and assessors chosen by a town do not accept the trust, the county commissioners may appoint three or more suitable persons in the county, to be assessors of taxes, and such assessors, being duly sworn, shall

assess upon the polls and estates in the town their due proportion of state and county taxes and said penalty, and not exceeding one dollar and fifty cents a day each, for their own reasonable charges for time and expense in said service; and shall issue a warrant under their hands for collecting the same, and transmit a certificate thereof to the treasurer of state, with the name of the person to whom it is committed; and the assessors shall be paid their charges as allowed by said commissioners out of the state treasury. R. S. c. 9, § 91.

All assessors, chosen or appointed as above provided, shall observe all warrants, received by them while in office, from the treasurer of state, or the county commissioners of their county. R. S. c. 9, § 92.

If assessors of a town refuse or neglect to assess any state tax apportioned on it, and required by the warrant of the treasurer of state to be assessed by them, they forfeit to the state the full sum mentioned in such warrant and such treasurer shall issue his warrant to the sheriff of the county to levy said sum by distress and sale of their real and personal estate. R. S. c. 9, § 93.

If such assessors neglect to assess the county tax required in the warrant of the county commissioners to be assessed by them, they forfeit that sum to the county; and it shall be levied by sale of their real and personal estate, by virtue of a warrant issued by the county treasurer to the sheriff of the county for that purpose. R. S. c. 9, § 94.

If the sheriff cannot find property of said assessors to satisfy the sum due on either of said warrants, he may arrest and imprison them, until they pay the same; and the county commissioners shall forthwith appoint other proper persons to be assessors of such state and county taxes, who shall be sworn, and perform the same duties, and be liable to the same penalties, as the former assessors. R. S. c. 9, § 95.

If the inhabitants of a town of which a state tax is required, neglect for five months, after having received the warrant of the treasurer of state for assessing it, to choose assessors to assess it, and cause the assessment thereof to be certified to such treasurer for the time being, he shall issue his warrant, under his hand, to the sheriff of the same county, who shall proceed to levy such sums on the real and personal property of any inhabitants of such town, observing the regulations provided for satisfying warrants against deficient collectors, as hereinafter prescribed. But if the assessors thereof, within sixty days from the receipt

of a copy of such warrant from the officer, deliver to him a certificate, according to law, of the assessment of the taxes required by the warrant, and pay him his legal fees, he shall forthwith transmit the certificate to the treasurer of state, and return the warrant unsatisfied. R. S. c. 9, § 96.

If the inhabitants of a town of which a county tax is required, neglect to choose and keep in office assessors to assess it, as the law requires, the county treasurer, for the time being, after five months from the time when they received the county commissioners' warrant for assessing it, shall issue his warrant to the sheriff, requiring him to levy and collect the sum mentioned therein; and he shall execute it, observing the regulations and subject to the conditions provided in the preceding section. R. S. c. 9, § 97.

If the voters of a town, of which a state or county tax is required, choose assessors who neglect to assess the tax required by the warrant issued to them, and to certify it as the law directs; and if the estates of such assessors are insufficient to pay such taxes as are already provided, the treasurer of state, or of the county, as the case may be, for the time being, shall issue his warrant to the sheriff of such county, requiring him to levy, by distress and sale, such deficiency on the real and personal estates of such inhabitants; and the sheriff or his deputy shall execute such warrants, observing all the provisions mentioned in section ninety-six. R. S. c. 9, § 98.

Any assessor, chosen and notified to take the oath of office, unreasonably refusing to be sworn, forfeits to the town fifteen dollars, to be recovered by their treasurer in an action of debt; and the selectmen shall forthwith call a town meeting to fill the vacancy. R. S. c. 9, § 99.

All plantations required to pay any part of the public taxes, are vested with the same power as towns, so far as relates to the choice of clerk, assessors and collectors of taxes; and any person, chosen assessor therein, and refusing to accept, or to take the legal oath, after due notice, is liable to the same penalty, to be recovered in the manner mentioned in the preceding section; and the other assessors shall forthwith call a plantation meeting to fill the vacancy. R. S. c. 9, § 100; 65 Me. 346.

Town clerks are to be sworn. R. S. c. 4, § 17.

Every person notified of election to a town office and neglecting to qualify within seven days, "except officers for whose

neglect a different penalty is provided, forfeits five dollars, two-thirds to the town, one-third to the prosecutor." R. S. c. 4, § 26.

Process of organizing plantations by the county commissioners in cases where an enumeration, at five year intervals, discloses a population of two hundred or more in an unorganized place. Issue of warrant to a principal inhabitant commanding him to notify inhabitants to meet and organize. R. S. c. 4, § 114.

Process of organizing plantations in unorganized places of any population, on application of three or more residents; or on warrant of the state treasurer or county commissioners, without such application, when a state or county tax is laid thereon. Proceedings under the warrant are the same as under the warrant issued under the circumstances of section one hundred and fourteen above. R. S. c. 4, § 115.

Laws relating to town meetings and town officers apply also to plantations and their officers except when specially otherwise provided. R. S. c. 4, § 120.

Assessors of plantations have the duties of town selectmen. Treasurer, collectors and constables give the same bonds as corresponding town officers. "The valuation of property for the assessment of taxes in plantations as well as the assessment, collection and disposal thereof, shall be the same as in towns." R. S. c. 4, § 121.

Provisions as to the manner of taking the first assessment in plantations organized under warrant of county commissioners under section one hundred and fourteen above. R. S. c. 4, § 122.

If any such plantation neglects to choose a clerk, assessors and collector of taxes, or if the assessors chosen neglect their duty, it shall be subject to the same penalties and proceeded against in the same manner as towns deficient in the same respect. R. S. c. 9, § 101.

The clerk, assessors and collectors, shall be sworn as similar officers chosen by a town, and shall receive the same compensation, unless otherwise agreed. R. S. c. 9, § 102.

When a state or county tax is laid on a place not incorporated or organized, the treasurer of state or county commissioners of that county may cause the same to be organized as provided in chapter four, sections one hundred and fourteen and one hundred and fifteen, for the organization of plantations ascertained

to contain two hundred inhabitants. If the inhabitant to whom the warrant is directed, fails to perform the duties required of him, he forfeits the sums due for state and county taxes, to be recovered by the treasurer to whom the tax is payable. R. S. c. 9, § 103.

The assessors shall thereupon take a list of the ratable polls, and a valuation of the estates of the inhabitants of the plantation, and proceed to assess taxes and cause the same to be collected as required by law. R. S. c. 9, § 104.

All laws applicable to organized plantations apply to plantations organized under section one hundred and three. R. S. c. 9, § 105.

Plantation officers neglecting to be sworn when notified, are liable to the same penalties as town officers so neglecting, to be recovered in the same manner. R. S. c. 9, § 106.

CHAPTER XXXII.

THE COLLECTION OF TAXES.

Towns, at their annual meetings, may determine when the lists named in section eighty-four of chapter nine shall be committed, and when their taxes shall be payable, and that interest shall be collected thereafter. R. S. c. 10, § 1; 71 Me. 182; 77 Me. 431; 82 Me. 194.

The rate of such interest, not exceeding one per cent a month, shall be specified in the vote, and shall be added to, and become part of the taxes. R. S. c. 10, § 2.

Cities must determine at the time when the money is raised, and not afterwards when their taxes shall become payable and what rate of interest thereafter shall accrue. 82 Me. 188.

A compulsory collection of interest cannot be justified without a definite and distinct vote fixing the time when the taxes are payable. A vote declaring that interest shall be collected after a certain time named, is not sufficient. Interest may, and generally does, commence to run before the principal is payable; and a vote declaring when interest shall commence, is by no

means equivalent to a vote fixing a time when the principal shall be payable. 77 Me. 431.

All state taxes hereafter assessed shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the treasurer of state. R. S. c. 10, § 3.

On or before the first day of September in each year, the treasurer of state shall issue his warrant to the treasurer of each town therein requiring him to transmit and pay said town's proportion of the state tax for the year nineteen hundred and , to , treasurer of state, or to his successor in office, on or before the time at which they are required to pay such tax. R. S. c. 10, § 4.

When the time for the payment of a state tax to the treasurer of state has expired, and it is unpaid, the treasurer of state shall give notice thereof to the municipal officers of any delinquent town, and unless such tax shall be paid within sixty days, the treasurer of state may issue his warrant to the sheriff of the county, requiring him to levy, by distress and sale, upon the real and personal property of any of the inhabitants of the town; and the sheriff or his deputy shall execute such warrants, observing the regulations provided for satisfying warrants against deficient collectors prescribed by this chapter. R. S. c. 10, § 5.

All county taxes hereafter assessed shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the county treasurers of their respective counties. R. S. c. 10, § 6.

On or before the first day of September of each year, the county treasurer shall issue his warrants to the treasurers of the several towns in his county, requiring them to transmit and pay their town's proportion of the county tax for the year nineteen hundred and , to , county treasurer, or his successor in office, on or before the time fixed by law for said payment. And if said town treasurer fails to pay such county tax for forty days after the time fixed therefor, said county treasurer shall issue his warrant directed to the sheriff of the county, requiring him to levy it, by distress and sale, on real and personal property of any of the inhabitants of the town. And the sheriff or his deputy shall execute such warrants, observing all

the provisions mentioned in section ninety-six of chapter nine. R. S. c. 10, § 7.

The warrant to be issued by selectmen or assessors for collection of state taxes shall be in substance as follows:

———, ss.

A. B., constable or collector of the town of ———, within the county of ——— :

GREETING:

In the name of the State of Maine, you are hereby required to levy and collect of each of the several persons named in the list herewith committed unto you, his respective proportion therein set down, of the sum total of such list, it being said town's proportion of the state tax for the year 19—; and to transmit and pay the same to ———, the treasurer of your town, or to his successor in office, and to complete and make an account of your collections of the whole sum on or before the ——— day of ——— next. And if any person refuses or neglects to pay the sum which he is assessed in said list, you shall distrain his goods or chattels to the value thereof, and keep the distress so taken for four days at the cost and charge of the owner; and if he does not pay the sum so assessed within said four days, then you shall sell at public vendue such distress for payment thereof with charges; first giving forty-eight hours' notice thereof by posting advertisements in some public place in the town or plantation, as the case may be; and the overplus arising by such sale, if any, beyond the sum assessed and the necessary charges of taking and keeping the distress, you shall immediately restore to the owner; and for want for twelve days, of goods and chattels, whereon to make distress, except implements, tools and articles of furniture exempt from attachment for debt, you shall take the body of such person so refusing or neglecting, and him commit to the jail of the county, there to remain until he pays the same, or such part thereof, as is not abated by the assessors for the time being, or the county commissioners for said county.

Given under our hands, by virtue of a warrant from the treasurer aforesaid, this ——— day of ——— 19—.

———, }
 ———, } *Assessors.*
 ———, }

And a certificate of the assessment of any state tax shall be in substance as follows:

Pursuant to a warrant from the treasurer of the State of Maine dated the ——— day of ———, 19—, we have assessed the polls and estates of the ——— of ———, the sum of ——— dollars and ——— cents, and have committed lists thereof to the ——— of said ———, viz.: to ———, with warrants in due form of law for collecting and paying the same to ———, town treasurer of ———, or his successor in office, on or before the ——— day of ———, next ensuing.

In witness whereof, we have hereunto set our hands at — this — day of — 19—.

_____,
_____, } *Assessors.*
_____,

No error or informality in the warrant so far as it relates to the description of the officer to whom any tax is to be paid by the collector shall render the same invalid, or relieve the collector from the duty of complying with the provisions of the statute in that behalf, or from liability on account of failure so to do. R. S. c. 10, § 8; 3 Me. 301; 4 Me. 75; 20 Me. 202; 40 Me. 528; 41 Me. 538; 55 Me. 503; 57 Me. 61; 61 Me. 552; 65 Me. 24; 68 Me. 161; 71 Me. 182; 73 Me. 126, 181; 74 Me. 410; 79 Me. 189.

An illegal provision in a warrant, separable from its other provisions, will not vitiate the instrument, nor become material, unless the direction is acted upon. No objection can be raised thereto by the person against whom there is no attempt to enforce it. 79 Me. 189.

The warrant for collection of county or town taxes, shall be made by the assessors in the same tenor, with proper changes. R. S. c. 10, § 9; 71 Me. 183; 73 Me. 126; 74 Me. 410.

When an original warrant issued by assessors and delivered to a constable or collector for collection of a tax, has been lost or destroyed by accident, the assessors may issue a new warrant for that purpose, which shall have the same force as the original. R. S. c. 10, § 10; 79 Me. 188.

When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. R. S. c. 10, § 11.

In case of distress or commitment for non-payment of taxes, the officer shall have the same fees which sheriffs have for levying executions, except that travel, in case of distress, shall be computed only from the dwelling-house of the officer to the place where it is made. R. S. c. 10, § 12.

Every collector or constable, required to collect taxes, shall receive a warrant from the selectmen or assessors of the kind hereinbefore mentioned, and shall faithfully obey its directions. R. S. c. 10, § 13; 1 Me. 250; 3 Me. 301; 4 Me. 75; 8 Me. 341; 15 Me. 28, 29; 20 Me. 202; 31 Me. 281; 41 Me. 538; 44 Me. 50; 47 Me. 518; 50 Me. 40, 351; 53 Me. 254; 55 Me. 501; 57 Me. 62; 61 Me. 555; 64 Me. 403; 68 Me. 161, 162; 69 Me. 334, 369; 73 Me. 181.

The assessors shall require such constable or collector to give bond for the faithful discharge of his duty, to the inhabitants of the town, in such sum, and with such sureties, as the municipal officers approve; and bonds of collectors of plantations shall be given to the inhabitants thereof, approved by the assessors, with like conditions. R. S. c. 10, § 14.

The refusal to give bond, as required by the foregoing section, is a non-acceptance of the office. 1 Me. 250.

The penalty annexed by law to the refusal to accept the town office, does not extend to a collector of taxes. 1 Me. 248.

An agreement between a town and one of its inhabitants that he should collect the taxes for a fixed compensation, on being chosen sole collector and constable, performed on the part of the town, is a legal contract and binding on the collector. 15 Me. 28.

Where a town chooses one of its inhabitants collector of taxes, on his agreeing to make the collection for a certain person, he is bound to collect for that compensation not only the amount raised at the meeting where he was chosen, but all taxes where the money was raised and the bills committed to him during the year. 15 Me. 28.

Collectors and constables can only be chosen by a major vote of the votes cast at the annual town meeting. If after the choice of the collector there is a vacancy the municipal officers may fill such in the manner prescribed by statute. To constitute an election to such offices, it is essential that the person claiming to be chosen should be presented distinctly before the meeting. Where the town voted that whoever should make the lowest bid for collecting the taxes, should be constable, such vote will not authorize the person making such bid to perform the duties of that office. 39 Me. 530.

A warrant which in terms gives no authority to distrain or commit is defective and a collector cannot be regarded as in fault for not collecting taxes committed to him for collection by such a warrant, and no recovery can be had upon his bond for failure to do so. 41 Me. 537.

Defects in a warrant or tax list may be a good reason for not executing the warrant, but a collector having collected money without objection by the tax-payers is liable to account therefor. 44 Me. 49; 73 Me. 177.

Where the same person was collector of taxes in a town for several successive years, and failed to pay over or account for a portion of the taxes committed to him the first year, moneys collected and paid over by him, arising from the taxes committed in the subsequent years, cannot be appropriated to make up the deficiency of the first year, so as to affect the relative rights and liabilities of the sureties on his several bonds, without their consent. 47 Me. 515.

Where the same person was collector of taxes in a town for several successive years, and paid to the treasurer certain money collected mostly from assessments of eighteen hundred and sixty-nine, and the treasurer credited it upon the collector's liability for taxes collected upon the assessment for eighteen hundred and sixty-eight, although the collector intended to have it applied upon the collections of eighteen hundred and sixty-nine he expressed no intention about it and made no appropriation whatever nor undertook to make any, and the treasurer did make an appropriation upon the liability of the longest standing, it was *Held*, that the collector could not later require the money to be appropriated upon the collections for eighteen hundred and sixty-nine. 61 Me. 557.

The giving of the statutory bond by a collector is not a condition precedent to the collector's assuming his official duties. 53 Me. 252.

Generally the term "bond" implies an instrument under seal. The official bond required of a collector of taxes must be a sealed instrument. The words "witness our hands and seals," when no seal is attached, will not make the instrument, though otherwise in proper form, a bond. An instrument, in form a bond, but containing no seal, voluntarily executed and delivered in lieu of a bond and accepted therefor, is valid. Its acceptance is a sufficient consideration to cover all official delinquencies in not paying over money actually collected after such acceptance. Assumpit, instead of debt, will lie. 68 Me. 160.

An action upon a collector's bond cannot be maintained by merely showing his failure to account and the commitment to him of the tax lists and warrant, if the latter directs an exemption from distress of property not exempt by statute. The plaintiffs must go further, in such case, and prove an actual reception of money for taxes by the collector, and not accounted for by him, or they will fail in their action. 64 Me. 403 ; 69 Me. 333.

The collector's and treasurer's degree of responsibility is simply that which the common law imposed upon him as bailee for hire ;

the statutes of this state did not extend or enlarge it ; his official bond does not increase his responsibility, but simply affords security for the performance of his legal obligations ; if, without fault or negligence on his part, he is violently robbed of money belonging to the county, it is a valid defence, *pro tanto*, to an action upon his official bond ; the burden of proving such a defence is upon him. 69 Me. 375.

Such bond shall, after its approval and acceptance, be recorded by the clerk, in the town or plantation records, and such record shall be *prima facie* evidence of the contents of such bond, but a failure to so record shall be no defense in any action upon such bond. R. S. c. 10, § 15.

When a tax is paid to a collector or constable, he shall give a receipt therefor on demand ; and if he neglects or refuses so to do, he forfeits five dollars to the aggrieved party, to be recovered in an action of debt. R. S. c. 10, § 16.

All plantations, required to pay any portion of the public taxes, have all the powers of towns so far as relates to the choice of constables and collectors and the requiring bonds from them. R. S. c. 10, § 17.

If a person refuses to pay any part of the tax assessed against him in accordance with this chapter, the person whose duty it is to collect the same, may distrain him by any of his goods and chattels not exempt, for the whole or any part of his tax, and may keep such distress for four days at the expense of the owner, and if he does not pay his tax within that time, the distress shall be openly sold at vendue by the officer for its payment. Notice of such sale shall be posted in some public place in the town, at least forty-eight hours before the expiration of said four days. R. S. c. 10, § 18 ; 40 Me. 528 ; 49 Me. 357 ; 61 Me. 402 ; 62 Me. 462 ; 65 Me. 24 ; 75 Me. 391, 394.

A collector of taxes legally qualified, acting within the scope of his powers, under a warrant from competent authority, may justify thereby the seizure and sale of the property of such delinquents as refuse to pay the taxes assessed against them. His justification will not fail by reason of any errors in the assessment or in the proceedings of the town, at the meeting at which he was chosen. And the return of his doings, upon the warrant, is *prima facie* evidence of the facts therein stated. 40 Me. 526.

If a collector of taxes keeps property, which he has seized on his warrant, beyond the time within which it could be legally

sold, he thereby becomes a trespasser *ab initio*; and the owners may replevy it. 49 Me. 356.

The collector has no authority to sell any additional articles after enough have been sold to pay the tax committed to him and the expense of the sale. If he does so he does not become a trespasser *ab initio* as to any article seized except such as he has sold in excess of his authority. His warrant protects him so far as he has not exceeded or abused its authority. 61 Me. 400.

Inasmuch as a collector's warrant protects him against all illegalities but his own, proof of errors in the assessment of a tax cannot be considered in a suit against one entrusted with its collection. 62 Me. 459.

A collector is not bound to keep or sell distrained property within the limits of the town in which it is first seized by him. 62 Me. 459.

It is no objection to the legality of the collector's proceedings that one of the four days during which he kept the distress was Sunday. 62 Me. 459.

The officer, after deducting the tax and expense of sale, shall restore the balance to the former owner, with a written account of the sale and charges. R. S. c. 10, § 19; 17 Me. 102; 32 Me. 558, 560; 59 Me. 297.

The return of the collector of taxes upon his warrant, of his proceedings on the distraining and sale of chattels for the payment of taxes, is *prima facie* evidence of his having tendered to the former owner the overplus arising from such sale beyond the amount of the tax and charges. 17 Me. 100.

If the collector receives a surplus of money upon the sale of property for a tax and omits to render to the owner a written account of the sale and charges, he is a trespasser *ab initio*. 32 Me. 557.

A collector is liable in trespass, if he sell upon his warrant a greater number of the chattels than sufficient to pay the tax, with the fees and charges. 32 Me. 559.

A collector who, after selling a distress, fails to restore the balance to the former owner, after deducting the unpaid taxes and legal expenses of sale, is a trespasser *ab initio*. 59 Me. 296.

If a person so assessed, for twelve days after demand, refuses or neglects to pay his tax and to show the constable or collector sufficient goods and chattels to pay it, such officer may arrest

and commit him to jail, until he pays it, or is discharged by law. R. S. c. 10, § 20; 19 Me. 328; 47 Me. 172; 49 Me. 430; 61 Me. 556; 71 Me. 406.

If the assessors think that there are just grounds to fear that any person so assessed may abscond before the end of said twelve days, the constable or collector may demand immediate payment, and on refusal, he may commit him as aforesaid. R. S. c. 10, § 21.

When a tax is made payable by instalments, and any person, who was an inhabitant of the town at the time of making such tax, and assessed therein, is about to remove therefrom before the time fixed for any payment, the collector or constable may demand and levy the whole tax, though the time for collecting any instalment has not arrived; and in default of payment he may distrain for it, or take the course provided in section twenty. R. S. c. 10, § 22.

When new constables or collectors are chosen and sworn before the former officers have perfected their collections, the latter shall complete the same, as if others had not been chosen and sworn. R. S. c. 10, § 23; 47 Me. 172; 53 Me. 256.

For non-payment of taxes, the collector or constable may distrain the shares owned by the delinquent in the stock of any corporation; and the same proceedings shall be had as when like property is seized and sold on execution. R. S. c. 10, § 24.

The proper officer of such corporation, on request of such constable or collector, shall give him a certificate of the shares or interest owned by the delinquent therein, and issue to the purchaser certificates of such shares according to the by-laws of the corporation. R. S. c. 10, § 25.

When a person taxed in a town in which he was living at the time of assessment, removes therefrom before paying his tax, such constable or collector may demand it of him in any part of the state, and, if he refuses to pay, may distrain him by his goods, and for want thereof may commit him to the jail of the county where he is found, to remain until his tax is paid; and he shall have the same power to distrain property and arrest the body in any part of the state, as in the place where the tax is assessed. R. S. c. 10, § 26.

Any collector of taxes, or his executor or administrator, may, after demand for payment, sue in his own name for any tax, in an action of debt, and no trial justice or judge of any municipal

or police court before whom such suit is brought, is incompetent to try the same by reason of his residence in the town assessing said tax. Where before suit the person taxed dies or removes to any other town, parish or place in the state, or, being an unmarried woman, marries, the aforesaid demand is not requisite, but the plaintiff shall recover no costs unless payment was demanded before suit. R. S. c. 10, § 27.

The lien on real estate created by section three of chapter nine may be enforced in the following manner, *provided, however*, that in the inventory and valuation upon which the assessment is made, there shall be a description of the real estate taxed, sufficiently accurate to identify it. Any officer to whom a tax has been committed for collection, except a collector appointed under section ninety, may, after the expiration of eight months from the date of commitment to him of said tax, give to the person against whom said tax is assessed, or leave at his last and usual place of abode, if then a resident of the town where said real estate lies, a notice in writing signed by said officer, stating the amount of such tax, describing the real estate on which the tax is assessed, and demanding the payment of such tax within ten days after service of such notice. After the expiration of said ten days, in case of a resident, and in all cases within one year after the date of commitment to him of said tax, such officer may bring an action of debt for the collection of said tax, in his own name, in the county where the land lies, against the person against whom said tax is assessed. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other writs of attachment to enforce liens on real estate. The declaration in such action shall contain a statement of such tax, a description of the real estate contained in said notice, and an allegation that a lien is claimed on said real estate to secure the payment of the tax. If no service is made upon the defendant, or if it shall appear that other persons are interested in such real estate, the court shall order such further notice of said action as appears proper, and shall allow such other persons to become parties thereto. If it shall appear upon trial of said action that such tax was legally assessed on said real estate, and is unpaid, and that there is an existing lien on said real estate for the payment of such tax, judgment shall be rendered for such tax, interest and costs of suit against the defendants and against the real estate attached, and execution issued thereon to be enforced by sale of such real

estate in the manner provided for a sale on execution of real estate attached on original writs. *Provided, however,* that when the officer sells the real estate on such execution he shall sell the least undivided fractional part thereof that any person bidding will take, and pay the amount due on the execution with all necessary charges of sale; and he shall convey by his deed to the purchaser such part so sold to him, subject to redemption according to law, and the deed shall be construed to convey the right of entry and seizin in such part in common and undivided of such property assessed. In all actions brought in the supreme judicial and superior courts under the provisions of this section or of sections ninety-three or ninety-five, full costs shall be recovered notwithstanding the amount of the judgment be twenty dollars or less. Any person interested in said real estate may redeem the same at any time within one year after the sale of the same by the officer on such execution, by paying the amount of such judgment and all costs on such execution with interest at the rate of ten per cent a year. This section shall not affect any other provision of law for the enforcement and collection of taxes upon real estate. R. S. c. 10, § 28; 50 Me. 377; 61 Me. 546; 77 Me. 55, 410; 82 Me. 156; 83 Me. 532; 86 Me. 365; 89 Me. 578; 89 Me. 337, 384.

At the trial of any action for the collection of taxes, or of any action at law or in equity involving the validity of any sale of real estate for non-payment of taxes, if it shall appear that the tax in question was lawfully assessed, the court may permit the collector or other officer to amend his record, return or deed in accordance with the fact, when circumstantial errors or defects appear therein; *provided,* that the rights of third parties are not injuriously affected thereby. And if a deed be so amended, and the amended deed be thereupon recorded, it shall have the same effect as if it had been originally made in its amended form. R. S. c. 10, § 29.

In all suits to collect a tax on real estate, if it appears that at the date of the list on which such tax was made, the record title to the real estate listed was in the defendant, he shall not deny his title thereto; *provided, however,* if any owner of real estate who has conveyed the same, shall forthwith file a copy of the description as given in his deed, with the date thereof and the name and residence of his grantee, in the registry of deeds where such deed should be recorded, he shall be free from any liability under this section. R. S. c. 10, § 30.

If money not raised for a legal object, is assessed, with other moneys legally raised, the assessment is not void ; nor shall any error, mistake, or omission by the assessors, collector or treasurer, render it void ; but any person paying such tax, may bring his action against the town in the supreme judicial court for the same county, and shall recover the sum not raised for a legal object, with twenty-five per cent interest and costs, and any damages which he has sustained by reason of the mistakes, errors or omissions of such officers. R. S. c. 10, § 31 ; 5 Me. 403 ; 15 Me. 262 ; 27 Me. 147 ; 30 Me. 411 ; 48 Me. 444 ; 51 Me. 376 ; 58 Me. 532 ; 59 Me. 493 ; 65 Me. 23 ; 68 Me. 356, 357 ; 69 Me. 65 ; 71 Me. 184 ; 77 Me. 415 ; 78 Me. 276, 282 ; 82 Me. 156 ; 90 Me. 245, 494 ; 92 Me. 529 ; 94 Me. 358, 495.

When the owner of improved lands lying in this state, but not in the town where the estate lies, is taxed, and neglects for six months after the lists of assessment are committed to an officer for collection, to pay his tax, such officer may distrain him by his goods and chattels, and for want thereof may commit him to jail in the county where he is found. R. S. c. 10, § 32 ; 25 Me. 362 ; 47 Me. 172 ; 74 Me. 284.

When the owner or possessor of goods, wares and merchandise, logs, timber, boards and other lumber, stock in trade, including stock employed in the business of any of the mechanic arts, horses, mules, neat cattle, shēep or swine, resides in any other town than the one in which such personal property is kept and taxed, the constable or collector having a tax on any such property for collection, may demand it of such owner or possessor in any part of the state, and on his refusal to pay, may distrain him by his goods, and for want thereof, may commit him to jail in the county where he is found, until he pays it, or is discharged by law. R. S. c. 10, § 33.

Any collector impeded in collecting taxes, in the execution of his office, may require proper persons to assist him in any town where it is necessary, and any person refusing when so required, shall, on complaint, pay not exceeding six dollars at the discretion of the justice before whom the conviction is had, if it appears that such aid was necessary ; and on default of payment, the justice may commit him to jail for forty-eight hours. R. S. c. 10, § 34.

Every collector of taxes shall once in two months at least exhibit to the municipal officers, or where there are none, to the assessors of his town, a just and true account of all moneys

received on taxes committed to him, and produce the treasurer's receipts for money by him paid; and for neglect, he forfeits to the town two and a half per cent on the sums committed to him to collect. R. S. c, 10, § 35; 68 Me. 163; 84 Me. 432.

The certificate above referred to must be signed by the assessors. The healing provisions of revised statutes, chapter three, section ten, and chapter six, section one hundred and forty-two relating to errors and omissions, are not applicable until a tax list is first shown to be in existence, under the hands of the assessors. 94 Me. 355.

The "omission" does not mean that an erroneous judgment of the value of an estate taxed can be corrected by a supplemental assessment. When the inventory of the estate was returned to the probate court, the assessors attempted, by the supplemental assessment, to revise and correct their estimate of the value of the personal estate, which they had once estimated and assessed. They had not "omitted" any item of personal property in April, but had doomed the personal estate in the aggregate. Finding subsequently that the aggregate personal property was more than their estimate, they sought to make a new valuation. No element of omission by mistake existed; no poll or estate was omitted. The personal estate, in the aggregate, was assessed and taxed in April; it was not omitted by mistake or otherwise. The judgment of the assessors was not accurate. If their doom of value had proved to be in excess of the value of the personal, the estate could not be relieved on that account. The omission contemplated by the statute is of some specific item. It is omission, and not erroneous judgment; that the statute provides for. The omission may be supplied by the supplemental assessment; the erroneous judgment cannot be corrected in that way. 90 Me. 492.

When a collector having taxes committed to him to collect, has removed; or in the judgment of the municipal officers, assessors, or treasurer of a town, or committee or treasurer of a parish, is about to remove from the state before the time set in his warrant to make payment to such treasurer; or when the time has elapsed, and the treasurer has issued his warrant of distress; in either case, said officers or committee, may call a meeting of such town or parish, to appoint a committee to settle with him for the money that he has received on his tax bills, to demand and receive of him such bills, and to discharge him therefrom; said meeting may elect another constable or collector,

and the assessors shall make a new warrant and deliver it to him with said bills, to collect the sums due thereon, and he shall have the same power in their collection as the original collector. R. S. c. 10, § 36; 57 Me. 62; 62 Me. 461; 82 Me. 45.

If such collector or constable refuses to deliver the bills of assessment, and to pay all moneys in his hands collected by him, when duly demanded, he forfeits two hundred dollars to the town or parish, as the case may be, and is liable to pay what remains due on said bills of assessment. R. S. c. 10, § 37; 57 Me. 62.

When a constable or collector of taxes dies, becomes insane, has a guardian, or by bodily infirmities is incapable of performing the duties of his office before completing the collection, the municipal officers may demand and receive the tax bills of any person in possession thereof, and deliver them to the new collector. R. S. c. 10, § 38; 62 Me. 461; 75 Me. 248; 82 Me. 45; 87 Me. 222.

The warrant to be issued by the assessors for the completion of the collection of taxes under the provisions of sections thirty-six and thirty-eight shall be in substance as follows:

_____, ss.

A. B., constable or collector of the town of _____ within the county of _____:

In the name of the State of Maine, you are hereby required to levy and collect of each of the several persons named in the list herewith committed unto you, his respective proportion therein set down, of the sum total of such list, amounting in the aggregate to _____ dollars and _____ cents, it being the unpaid portion of the taxes assessed in the town of _____ for the year _____, for state, county and town purposes, and to pay the same to _____, treasurer of said town of _____ or to his successor in office, and to complete and make an account of your collections of the whole sum on or before the _____ day of _____ next. And if any person refuses or neglects to pay the sum which he is assessed in said list, you will distrain his goods or chattels, to the value thereof. And in making such distress, and for want of goods and chattels, whereon to make distress, except such as are exempt by the provisions of section eight of chapter ten of the revised statutes, you will in all matters proceed as prescribed in section eight of chapter ten of the revised statutes as fully as if the same were herein set forth.

Given under our hands, by virtue of the law in such cases provided, this _____ day of _____ in the year of our Lord 19—.

_____, }
_____, } *Assessors.*
_____, }

R. S. c. 10, § 39.

When it appears that such insane or disqualified constable or collector had paid to the treasurer a larger sum than he had collected from the persons in his list, the assessors in their warrant to such new constable or collector, shall direct him to pay such sum to the guardian of such insane, or to such disqualified constable or collector. R. S. c. 10, § 40.

The treasurer of state shall issue a warrant of distress, signed by him, against any constable or collector to whom a tax has been committed for collection, who is negligent in paying into the public treasury the money required within the time limited by law; and shall direct it to the sheriff of the county in which such negligent officer lives, or to his deputy, returnable in sixty days from its date, to cause the sum due to be levied, with interest from the day fixed for payment, and fifty cents for the warrant, by distress and sale of such deficient officer's real or personal estate, returning any overplus that there may be, and for want thereof, to commit him to jail until he pays it; and the sheriff shall obey such warrant. Warrants not satisfied may be renewed for the amount unpaid, and shall be of like validity and executed in like manner. R. S. c. 10, § 41; 19 Me. 374; 69 Me. 458; 74 Me. 410; 82 Me. 45.

When the time for collecting a state tax has expired, and it is unpaid, the treasurer of state shall, at the request of the municipal officers of any town, issue his execution against the collector thereof. R. S. c. 10, § 42; 82 Me. 45.

If a collector of any town fails to pay the county tax for forty days after the time fixed therefor, the county treasurer shall issue his warrant against him in due form of law, returnable in three months from its date, directed to the sheriff or his deputy, requiring him to collect the tax, with six per cent interest thereon from the time it was payable, fifty cents for the warrant, and his own legal fees. R. S. c. 10, § 43.

If a deficient constable or collector has no estate which can be distrained, and his person cannot be found within three months after a warrant of distress issues from the treasurer of state, or, if being committed to jail, he does not within three months satisfy it, his town shall, within three months more, pay to the state the sums due from him. R. S. c. 10, § 44; 69 Me. 458.

The assessors having written notice from such treasurer of the failure of their constable or collector, shall forthwith, without any further warrant, assess the sum so due upon the inhabitants of their town as the sum so committed was assessed, and commit

it to another constable or collector for collection; and if they neglect, the treasurer of state shall issue his warrant against them for the whole sum due from such constable or collector, which shall be executed by the sheriff or his deputy, as other warrants issued by such treasurer. If after such second assessment, the tax is not paid to the treasurer within three months from the date of its commitment, the treasurer may issue his warrant to the sheriff of the county requiring him to levy it on real and personal property of any inhabitants of the town, as hereinbefore provided. R. S. c. 10 § 45; 69 Me. 458.

Such deficient collector or constable shall at all times be answerable to such inhabitants for all sums which they have been obliged to pay by means of his deficiency, and for all consequent damages. R. S. c. 10, § 46; 57 Me. 62; 69 Me. 457.

If a collector or constable of a town or parish dies without settling his accounts of taxes committed to him to collect, his executor or administrator, within two months after his acceptance of the trust, shall settle with such assessors for what was received by the deceased in his lifetime; with the amount so received, such executor or administrator is chargeable as the deceased would be if living; and if he fails so to settle, when he has sufficient assets in his hands, he shall be chargeable with the whole sum committed to the deceased for collection. R. S. c. 10, § 47.

If the constable or collector of any town or parish, to whom taxes have been committed for collection, neglects to collect and pay them to the treasurer named in the warrant of the assessors by the time therein stated, such treasurer shall issue his warrant, returnable in ninety days, and in substance as follows, to the sheriff of the county or his deputy, who shall execute it.

A. B., treasurer of the — of —, in the county of —, to the sheriff of said county, or his deputy.

GREETING.

Whereas C. D., of — aforesaid, (addition) on the — day of —, 19—, being a — of taxes granted and agreed on by the — aforesaid, had a list of assessments duly made by the assessors of the — aforesaid, amounting to the sum of \$ —. —, committed to him with a warrant under their hands, directing and empowering him to collect the several sums in said assessment mentioned, and pay the same to the treasurer of the — aforesaid by the — day of —, 19—, but the said C. D. has been remiss in his duty by law required, and has neglected to collect the several sums aforesaid, and pay them to the treasurer of the — aforesaid; and there still remains due thereof the sum of \$ —. —, and the said C. D. still neglects

to pay it: You are hereby, in the name of the state, required forthwith to levy the aforesaid sum of \$ ——. —, by distress and sale of the estate, real or personal, of said C. D., and pay the same to the treasurer of said —, returning the overplus, if any, to said C. D. And for want of such estate, to take the body of said C. D., and him commit to the jail in the county aforesaid, there to remain until he has paid the said sum of \$ ——. —, with forty cents for this warrant, together with your fees, or he is otherwise discharged therefrom by order of law; and make return of this warrant to myself, or my successor, as treasurer of said —, within ninety days from this time, with your doings therein.

Given under my hand, this — day of —, in the year 19—.

—, *Treasurer of* —.

R. S. c. 10, § 48; 17 Me. 447; 19 Me. 374; 33 Me. 483; 64 Me. 190; 73 Me. 181; 74 Me. 411; 82 Me. 45.

On each execution or warrant of distress issued by the treasurer of state, or by the treasurer of a county, town or parish, against a constable or collector, or against the inhabitants of a town, and delivered to a sheriff or his deputy, he shall make return of his doings to such treasurer, within a reasonable time after the return day therein mentioned, with the money, if any, that he has received by virtue thereof; and if he neglects to comply with any direction of such warrant or execution, he shall pay the whole sum mentioned therein. When it is returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for the sum due on the return of the first; and so on, as often as occasion occurs. A reasonable time after the return day shall be computed at the rate of forty-eight hours for every ten miles distance from the dwelling-house of the sheriff or his deputy to the place where the warrant is returnable. R. S. c. 10, § 49.

When a sheriff or deputy is deficient as aforesaid, such treasurers may direct warrants to a coroner of the county, requiring him to distrain therefor upon the delinquent's real or personal estate; and the coroner shall execute such warrants as a sheriff does on deficient constables and collectors. R. S. c. 10, § 50.

Any officer selling personal property, distrained under a warrant from such treasurers against a sheriff, constable or collector, or against the inhabitants of a town, shall proceed as in the sale of such property on execution. R. S. c. 10, § 51.

When a warrant of distress from such treasurers is levied on the real estate of a deficient constable, collector, sheriff or deputy sheriff, or against the inhabitants of a town, for the

purpose of sale, fourteen days' notice of the sale, and time and place shall be given, by posting advertisements in two or more public places in the town or place where the estate lies, and in two adjoining towns. R. S. c. 10, § 52.

At that time and place, the officer having such warrant shall sell, at public vendue, so much of such estate, in common and undivided with the residue, if any, as is necessary to satisfy the sum named in the warrant, with all legal charges; and execute to the purchaser a sufficient deed thereof, which shall be as effectual as if executed by the deficient owner. R. S. c. 10, § 53.

If the proceeds of such sale do not satisfy such sum and legal charges, the treasurer who issued the warrant, shall issue an alias warrant for the sum remaining due; and the officer executing it shall arrest such deficient officer, and proceed as on an execution for debt; and such deficient officer shall have the same rights and privileges as a debtor arrested or committed on execution in favor of a private creditor. R. S. c. 10, § 54.

When any constable or collector of taxes is taken on execution under this chapter, the assessors may demand of him a true copy of the assessments, which he received of them and then has in his hands unsettled, with the evidence of all payments made thereon; and if he complies with this demand, he shall receive such credit as the assessors, on inspection of the assessment, adjudge him entitled to, and account for the balance; but if he refuses, he shall forthwith be committed to jail by the officer who so took him, or by a warrant from a justice of the peace, to remain there until he complies; and the assessors shall take and use copies of the record of assessments instead of the copies demanded of him. R. S. c. 10, § 55; 62 Me. 461.

The same town or parish may, at any time, proceed to the choice of another collector, to complete the collection of the assessments, who shall be sworn and give the security required of the first collector; and the assessors shall deliver to him the uncollected assessments, with a proper warrant for their collection, and he shall proceed as before prescribed. R. S. c. 10, § 56; 57 Me. 62; 62 Me. 461.

When the tax of any person named in said assessment does not thereby appear to have been paid, but such person declares that it was paid to the former collector, the new collector shall not distrain or commit him, without a vote of such town or

parish first certified to him by its clerk. R. S. c. 10, § 57; 57 Me. 62.

When a town neglects to choose and the selectmen to appoint any constable or collector to collect a state or county tax, the sheriff of the county shall collect it, on receiving an assessment thereof, with a warrant under the hands of the assessors of such town, duly chosen, or appointed by the county commissioners, as the case may be. R. S. c. 10, § 58.

When plantations neglect to choose constables or collectors, or those chosen and accepting their trust neglect their duty, such plantations shall be proceeded against as in the case of deficient towns; and such deficient constables or collectors are liable to the same penalties, and shall be removed in the same manner, as deficient constables and collectors of towns. R. S. c. 10, § 59.

The sheriff or his deputy, on receiving such assessment and warrant for collection as is mentioned in the two preceding sections, shall forthwith post in some public place in the town or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of such taxes until after thirty days therefrom; and any person paying his tax to such sheriff within that time, shall pay five per cent over and above his tax for sheriff's fees, and no more; but those who do not pay within that time shall be distrained or arrested by such officer, as by collectors; and the sheriff may require aid for the purpose, and the same fees shall be paid for travel and service of the sheriff, as in other cases of distress. R. S. c. 10, § 60.

When an officer appointed to collect assessments by virtue of a warrant, for want of property arrests any person and commits him to jail, he shall give an attested copy of his warrant to the jailer, and certify, under his hand, the sum that he is to pay as his tax and the costs of arresting and committing, and that for want of goods and chattels whereon to make distress, he has arrested him; and such copy and certificate are a sufficient warrant to require the jailer to receive and keep such person in custody, until he pays his tax, charges, and thirty-three cents for the copy of the warrant; but he shall have the rights and privileges, mentioned in section fifty-four. R. S. c. 10, § 61; 71 Me. 24; 77 Me. 406.

Any person arrested or imprisoned on a warrant for the collection of a public tax, and every constable, collector or deputy sheriff, arrested or imprisoned for default in collecting

taxes committed to him, has the privileges, and is subject to the obligations of this chapter, as if arrested or imprisoned on execution for debt; and for all purposes relating thereto, the assessors of the town for the time being where the tax was assessed, shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate of discharge; but nothing herein exempts any property from distress for taxes, except those implements, tools and articles of furniture which are exempt from attachment for debt. R. S. c. 144, § 66; 19 Me. 326; 39 Me. 346; 73 Me. 283.

When a person, committed for non-payment of taxes due to the state or county, is discharged by virtue of any statute for the relief of poor prisoners confined in jail for taxes, the town whose assessors issued the warrant by which he was committed shall pay the whole tax required of it. R. S. c. 10, § 62.

When a person imprisoned for not paying his tax, is discharged, the officer committing him shall not be discharged from such tax without a vote of the town, unless he imprisoned him within one year after the taxes were committed to him to collect. R. S. c. 10, § 63; 61 Me. 557; 82 Me. 44.

For commitments for non-payment of taxes, the officer shall have the same fees as for levying executions, but his travel shall be computed only from his dwelling-house to the place of commitment. R. S. c. 10, § 64.

In addition to other provisions for the collection of taxes legally assessed, the mayor and treasurer of any city, the selectmen of any town, and the assessors of any plantation to which a tax is due, may in writing direct an action of debt to be commenced in the name of such city or of the inhabitants of such town or plantation, against the party liable; but no such defendant is liable for any costs of suit, unless it appears by the declaration and by proof, that payment of said tax had been duly demanded before suit. And no execution shall run against the body of any person issued on a judgment recovered for the collection of any poll tax. R. S. c. 10, § 65; 66 Me. 198; 67 Me. 261; 70 Me. 304; 71 Me. 404; 74 Me. 283-4; 76 Me. 550; 78 Me. 278; 79 Me. 183; 82 Me. 157; 83 Me. 229; 84 Me. 505; 86 Me. 318, 364; 87 Me. 361; 89 Me. 154, 578, 582; 90 Me. 182.

If an action be brought under the foregoing section, it must be regarded as a waiver of procedure by arrest or distraint; resort cannot be had to both processes at the same time, this

being an additional and not a concurrent remedy. 67 Me. 260.

When an action is brought under the foregoing sections the declaration should allege that the defendant was liable to taxation in the plaintiff town for the years during which the taxes were assessed, and if it does not so allege, the declaration is bad on demurrer. 70 Me. 303.

A collector of taxes who was not sworn, is an officer de facto, having certain powers. Payment to him will discharge a tax. A demand made by him is a sufficient demand to comply with the provisions of the statute, when the refusal to pay is to be upon other grounds than in one of qualification on the part of the collector. 74 Me. 280.

A tax on the real and personal estate of a deceased intestate, assessed to the "estate" of the deceased after the appointment and qualification of an administrator, is not assessed in conformity with law, and no action therefor by the town against the administrator, can be maintained. 76 Me. 549.

A tax assessed against the "administrator of the estate of R," when the representative parties were executors and not administrators is not a fatal mistake, it being fairly within the scope of the statute. 78 Me. 276.

It is a general rule that an illegal provision in a warrant, separable from its other provision, will not vitiate the instrument, unless the direction is acted upon. An unauthorized mandate in the warrant to a collector to collect interest on the assessments, not enforced or attempted to be, does not affect in other respects the validity of the warrant. 79 Me. 183.

In an action against a tax-payer, the plaintiffs cannot recover costs in the absence of proof of a demand made upon the defendant before action brought. 82 Me. 152.

In an action of debt to recover a tax assessed upon personal property, it is a material averment that the defendant was an inhabitant of the plaintiff town, etc., and it is incumbent upon the plaintiff to establish it by competent evidence. 83 Me. 228.

In an action under the statute to recover taxes due a city or town it is not a defense that the assessors made only one valuation for each tax, state, county and town, and blended together the several sums to be thus levied, making but one assessment for the whole. It is not a defence to such action that the assessors made and listed one appraisal in gross of three separate lots of land not adjoining, nor in any way connected with one

another, instead of making and listing a separate appraisal for each lot. Much greater particularity and precision are required when a forfeiture is sought to be enforced than when a simple recovery of a tax by suit is asked for. 84 Me. 503.

A general direction by the selectmen of a town to a tax collector to commence actions against "any and all tax-payers" who "refuse or fail" to pay their taxes, is not a compliance with the statute. The power conferred by this statute requires an exercise of judgment and discretion. A refusal to pay a tax is one thing. A failure to pay is another. The former may be the result of willfulness or a denial of the legality of the tax, the latter may be the result of sickness and poverty and an utter inability to pay. In the former case an action may be expedient. In the latter inexpedient. It is plain, therefore, that judgment and discretion are to be exercised in determining whether or not an action shall be commenced. And it is a familiar and well settled rule of law that when judgment and discretion are to be exercised, they must be exercised by the persons on whom the law has placed the power and authority to act. Their exercise cannot be transferred to another. Such powers are incapable of delegation. 86 Me. 318; 86 Me. 363.

In an action for a tax, a formal admission that "a demand for the tax was made at the date of the writ" is sufficient evidence of a demand "before suit." 87 Me. 357.

Towns at their annual meetings may determine when the tax lists shall be committed, and when their taxes shall be payable, and that interest shall be collected thereafter. The rate of said interest, not exceeding one per cent a month, shall be specified in the vote, and shall be added to and become a part of the tax.

Where the town assesses the taxes and at a subsequent meeting votes to charge interest it was held that no interest can be recovered since the resolve imposing the interest was not passed at the time of imposing the tax. 87 Me. 361.

In an action in the name of a town to recover taxes, it is a necessary averment that the selectmen directed in writing the action to be brought. Good pleading requires it to be alleged what time and place, but the time and place need not be proved as alleged, and are not traversable facts. Their omission is matter of form, which can be taken advantage of on special, but not general demurrer. 89 Me. 154.

Much greater particularity and precision are required in proceedings for the recovery of unpaid taxes wherein a forfeiture is

sought to be enforced than in a suit at law for mere recovery of them. It is not necessary as a prerequisite to the validity of the tax that the lists committed to the collector should contain an exact description of the real estate taxed, or even the same as contained in the record of assessment. 89 Me. 582.

Where suit is brought in the name of the inhabitants of a town for the collection of unpaid taxes, by the written direction of the selectmen, such averment is necessary to a proper declaration, and this omission would constitute a fatal defect to the declaration if advantage were taken by demurrer. 89 Me. 582.

A demand made by the collector of taxes upon the company's agent or superintendent who has charge of the water works in the town, by the agent of the town who is duly authorized to commence the action, is held a sufficient demand on the company to warrant recovery of costs. 90 Me. 180.

On and after January first, nineteen hundred and eight, all municipal officers of cities and towns in making out their yearly report shall cause to be printed in said report the names and amounts of all delinquent tax-payers which have been committed to the treasurer or collector for collection.

The failure for non-performance of this duty shall be not less than five dollars nor more than twenty-five dollars. P. L. 1907 c. 166.

At any meeting, when it votes to raise a tax, a town may agree on the abatement to be made to those who voluntarily pay their taxes to the collector or treasurer at certain periods, and the times within which they are so entitled; and a notification of such votes, and the time when such taxes must be paid to obtain the abatement, shall be posted by the treasurer in one or more public places in his town, within seven days after such commitment; and all who so pay their taxes are entitled to such abatement; but no person shall receive an abatement of more than ten per cent of his tax; and all taxes not so paid shall be collected by the collector or his deputy, under the other provisions of this chapter. R. S. c. 10, § 66.

The collector of taxes of any town or the treasurer of any town who is also a collector, may issue his warrant to the sheriff of any county, or his deputy or to a constable of his town, directing him to distrain the person or property of any person not paying his taxes within three months after the date of the original commitment which warrant shall be of the same tenor

as that prescribed to be issued by municipal officers or assessors to collectors with the appropriate changes returnable to the collector or treasurer issuing the same in thirty, sixty or ninety days. R. S. c. 10, § 67; 96 Me. 269.

When such collector or treasurer thinks that there is danger of losing by delay a tax assessed on any individual, he may distrain his person or property before the expiration of the time named in the preceding section. R. S. c. 10, § 68.

Before such officer serves any such warrant, he shall deliver to the delinquent, or leave at his last and usual place of abode, a summons from said collector or treasurer, stating the amount of tax due, and that it must be paid within ten days from the time of leaving such summons, with twenty cents for the officer for leaving the same; and if not so paid, the officer shall serve such warrant the same as collectors of taxes may do, and shall receive the same fees as for levying executions in personal actions. R. S. c. 10, § 69; 96 Me. 270.

The affidavit of any disinterested person as to posting notifications required for the sale of any land to be sold by the sheriff or his deputy, constable or collector, in the execution of his office, may be used in evidence in any trial to prove the fact of notice; if such affidavit, made on one of the original advertisements, or on a copy of it, is filed in the registry of the county or district where the land lies, within six months. R. S. c. 10, § 70.

When the estate of an inhabitant of a town or parish, who is not an assessor thereof, is levied upon and taken as mentioned in sections eighty-eight, ninety-six, ninety-seven or ninety-eight of chapter nine, or in sections five, seven or forty-five of this chapter, he may maintain an action against such town or parish, and recover the full value of the estate so levied on, with interest at the rate of twenty per cent from the time it was taken, with costs; and such value may be proved by any other legal evidence, as well as by the result of the sale under such levy. R. S. c. 10, § 71.

All warrants lawfully issued by a state or county treasurer, shall be made returnable in three months, and may be renewed for the collection of what appears due upon them when returned, including expenses incurred in attempting to collect them; and the power and duty of the sheriff shall be the same in executing such alias or pluries warrant, as if it were the original. R. S. c. 10, § 72; 53 Me. 284.

If any tax assessed on real estate, or on equitable interests assessed under section three of chapter nine, remains unpaid on the first Monday in February next after said tax was assessed, the collector shall sell at public auction so much of such real estate or interest as is necessary for the payment of said tax, interest and all the charges, at nine o'clock in the forenoon of said first Monday in February, at the office of collector of taxes, in cities, and at the place where the last preceding annual town meeting was held, in towns. In the case of the real estate of resident owners, the collector may give notice thereof and of his intention to sell so much of said real estate or interest as is necessary for the payment of said tax and all charges, by posting notices thereof in the same manner and at the same places that warrants for town meetings are therein required to be posted, six weeks before such first Monday in February, designating the name of the owner if known, the right, lot and range, the number of acres as nearly as may be, the amount of tax due, and such other short description as is necessary to render its identification certain and plain. And in the case of taxes assessed on the real estate of non-resident owners, he shall cause said notices to be published in some newspaper, if any, published in the county where said real estate lies, three weeks successively; such publication to begin at least six weeks before said first Monday in February; if no newspaper is published in said county, said notices shall be published in like manner, in the state paper; he shall, in the advertisements so published, state the name of the town, and if within three years it has been changed for the whole or a part of the territory, both the present and former name shall be stated; and that, if the taxes, interest and charges are not paid on or before such first Monday in February, so much of the estate as is sufficient to pay the amount due therefor with interest and charges, will be sold without further notice, at public auction, on said first Monday in February, at nine o'clock in the forenoon, at the office of the collector of taxes, in cities, and at the place where the last preceding annual town meeting was held, in towns. The date of the commitment shall be stated in the advertisement. In all cases, said collector shall lodge with the town clerk a copy of each such notice, with his certificate thereon that he has given notice of the intended sale as required by law. Such copy and certificate shall be recorded by said clerk and the record so made shall be open to the inspection of all persons interested. The clerk shall furnish to any person desiring it an attested copy of such record,

on receiving payment or tender of payment of a reasonable sum therefor; but notices of sales of real estate within any village corporation for unpaid taxes of said corporation may be given by notices thereof, posted in the same manner, and at the same places as warrants for corporation meetings, and by publication, as aforesaid. No irregularity, informality or omission in giving the notices required by this section, or in lodging copy of any of the same with the town clerk, as herein required, shall render such sale invalid, but such sale shall be deemed to be legal and valid, if made at the time and place herein provided, and in other respects according to law, except as to the matter of notice. For any irregularity, informality or omission in giving notice as required by this section, and in lodging copy of the same with the town clerk, the collector shall be liable to any person injured thereby. R. S. c. 10, § 73; 32 Me. 69; 35 Me. 554; 58 Me. 532, 533; 73 Me. 382; 84 Me. 190, 377; 89 Me. 337; 95 Me. 124; 30 Me. 326; 1 Me. 307; 12 Me. 378; 26 Me. 231; 30 Me. 229; 32 Me. 69; 63 Me. 381; 70 Me. 279; 74 Me. 284.

The notice for posting, or the advertisement, as the case may be, of the collector shall be in substance as follows:

Unpaid taxes on lands situated in the town of —, in the county of —, for the year —. [*N. B.*] The name of the town was formerly —, [*to be stated in the case of change of name, as mentioned in the preceding section.*] The following list of taxes on real estate of resident [*or non-resident, as the case may be*] owners in the town of —, for the year —, committed to me for collection for said town, on the — day of —, remain unpaid; and notice is hereby given that if said taxes, interest and charges are not previously paid, so much of the real estate taxed, as is sufficient to pay the amount due therefor, including interest and charges, will be sold at public auction at —, in said town, on the first Monday of December, 19—, at nine o'clock A. M. [*N. B. Here follows the list, a short description of each parcel taken from the inventory to be inserted in an additional column.*]

C. D., *Collector of Taxes of the Town of —.*

R. S. c. 10, § 74.

After the land is so advertised, and at least ten days before the day of sale, the collector shall notify the owner, if resident, or the occupant thereof, if any, of the time and place of sale by delivering to him in person, or leaving at his last and usual place of abode, a written notice signed by him, stating the time and place of sale, and the amount of taxes due. In case of non-resident owners of real estate, such notice shall be sent by mail

to the last and usual address, if known to the collector, at least ten days before the day of sale. If such tax is paid before the time of sale, the amount to be paid for such advertisement and notice shall not exceed one dollar, in addition to the sum paid the printer, if any. R. S. c. 10, § 75; 73 Me. 382; 84 Me. 190.

When no person appears to discharge the taxes duly assessed on any such real estate of resident or non-resident owners, with costs of advertising, on or before the time of sale, the collector shall proceed to sell at public auction, to the highest bidder, so much of such real estate or interest as is necessary to pay the tax due, with three dollars for advertising and selling it, the sum paid to the printer, twenty-five cents for each copy required to be lodged with the town clerk, twenty-five cents for the return required to be made to the town clerk, fifty cents for the town clerk for recording the same, and sixty-seven cents for the deed thereof and certificate of acknowledgment. If the bidding is for less than the whole, it shall be for a fractional part of the estate, and the bidder who will pay the sum due for the least fractional part shall be purchaser. If more than one right, lot or parcel of land is so advertised and sold, said charge of three dollars, the twenty-five cents for each copy lodged with the town clerk, the twenty-five cents for the return made to the town clerk, and the fifty cents for the town clerk for recording the same, shall be divided equally among the several rights, lots or parcels advertised and sold at any one time; and in addition, the sum paid to the printer shall be divided equally among the non-resident rights, lots or parcels so advertised and sold; and the collector shall receive in addition, fifty cents on each parcel of real estate so advertised and sold, when more than one parcel is advertised and sold. The collector may, if necessary to complete the sales, adjourn the auction from day to day. R. S. c. 10, § 76; 19 Me. 100, 369; 25 Me. 362; 27 Me. 356; 30 Me. 325; 32 Me. 69, 309; 34 Me. 268; 36 Me. 178, 435; 40 Me. 161; 43 Me. 311; 48 Me. 377; 58 Me. 533; 61 Me. 209; 68 Me. 395; 71 Me. 236; 74 Me. 222; 84 Me. 190; 97 Me. 447.

If the purchaser of land sold for taxes under section seventy-six of chapter ten of the revised statutes fails to pay the collector within twenty days after the sale the amount bid by him, the sale shall be void, and the city or town in which such sale was made shall be deemed to be the purchaser of the land so sold, the same as if purchased by some one in behalf of the city

or town under section eighty-five of said chapter ten. P. L. of 1905 c. 27, § 1.

If a city or town becomes a purchaser under the preceding section, the deed to it shall set forth the fact that a sale was duly made, the amount bid for the land included in said deed and that the purchaser failed to pay the amount bid within twenty days after the sale; and the said deed shall confer upon said city or town the same rights and duties as if it had been the purchaser under section eighty-five of said chapter ten. P. L. of 1905 c. 27, § 2.

When real estate is so sold for taxes, the collector shall, within thirty days after the day of sale, lodge with the treasurer of his town a certificate under oath designating the quantity of land sold, the names of the owners of each parcel, and the names of the purchasers; what part of the amount of each was tax, and what was cost and charges; also a deed of each parcel sold, running to the purchasers. The treasurer shall not deliver the deeds to the grantees, but put them on file in his office, to be delivered at the expiration of two years from the day of sale, in the case of lands of resident owners, and one year from the day of sale in the case of lands of non-resident owners, if the owner does not within such time redeem his estate from the sale, by payment of the taxes, and all charges, and interest on the whole at the rate of ten per cent from the day of sale to the time of redemption, and costs as above provided, with sixty-seven cents for the deed and certificate of acknowledgment and all sums paid for internal revenue stamps affixed to such deed. If the deed of land of a non-resident owner is recorded within thirteen months after the day of sale, no intervening attachment or conveyance shall affect the title. If so redeemed, the treasurer shall give the owner a certificate thereof, cancel the deed, and pay to the grantee, on demand, the amount so received for him. If not so paid, he shall deliver to the grantee his deeds, on payment of the fees, as aforesaid, for the deed and acknowledgment, and thirty cents more for receiving and paying out the proceeds of the sale. For the fidelity of the treasurer in discharging the duties herein required, the town is responsible, and has a remedy on his bond in case of default. R. S. c. 10, § 77; 84 Me. 190; 96 Me. 500.

All sums paid by any collector of taxes, or treasurer, for internal revenue stamps to be affixed to any deed of real estate, or interest therein, sold for non-payment of a tax, shall be deemed

a part of the costs and charges for making such sale. R. S. c. 10, § 78.

The person interested in the estate, by purchase at the sale, may pay any tax assessed thereon, before or after that so advertised, and for which the estate remains liable, and on filing with the treasurer the receipt of the officer to whom it was paid, the amount so paid shall be added to that for which the estate was liable, and shall be paid by the owner redeeming the estate, with interest at the same rate as on the other sums. After the deed of land of a non-resident owner is so delivered, the owner has six months within which to redeem his estate, by paying to the purchaser the sum by him so paid, with interest at the rate of twenty per cent a year. R. S. c. 10, § 79.

The collector making any sale of real estate for non-payment of taxes, shall, within thirty days after such sale make a return, with a particular statement of his doings in making such sale, to the clerk of his town; who shall record it in the town records; and said return, or if lost or destroyed, an attested copy of the record thereof, shall be evidence of the facts therein set forth in all cases where such collector is not personally interested. The collector's return to the town clerk shall be in substance as follows:

Pursuant to law, I caused the taxes assessed on the real estate of non-resident owners described herein, situated in the town of — for the year —, to be advertised according to law by advertising in the — three weeks successively, the first publication being on the — day of —, and at least six weeks before the day of sale; and caused the taxes assessed on the real estate of resident owners described herein, situated in the town of — for the year —, to be advertised according to law by posting notice as required by law, at the following places, six weeks before the day of sale, being public and conspicuous places in said town. I also, at least ten days before the day of sale, gave to each resident owner of said lands, or the occupant thereof, if any, in hand, or left at his last and usual place of abode, and sent by mail to the last and usual address of each non-resident owner of said lands, whose address was known to me, written notice of the time and place of said sale, in the manner provided by law; and afterwards on the first Monday of December, 19—, at nine o'clock, A. M., being the time and place of sale, I proceeded to sell, according to the tenor of the advertisement, the estates upon which the taxes so assessed remained unpaid; and in the schedules following is set forth each parcel of the estate so offered for sale, the amount of taxes, and the name of the purchaser; and I have made and executed deeds of the several parcels to the several persons entitled thereto, and placed them on file in the town treasurer's office, to be disposed of as the law requires.

SCHEDULE No. 1.

NON-RESIDENT OWNERS.

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
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SCHEDULE No. 2.

RESIDENT OWNERS.

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
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In witness of all which I have hereunto subscribed my name, this — day of —, 19—.

C. D., *Collector of Taxes of the Town of* —.

R. S. c. 10, § 80 ; 84 Me. 190 ; 95 Me. 124, 126.

Any person to whom the right by law belongs, may, at any time within two years from the day of sale, redeem any real estate or interest of resident proprietors sold for taxes on paying into the town treasury for the purchaser, the full amount so certified to be due, both taxes and cost, including the sum allowed for the deeds and stamps, with interest on the whole at the rate of twenty per cent a year from the date of the sale, which shall be received and held by said treasurer as the property of the purchaser aforesaid ; and the treasurer shall pay to said purchaser, his heirs or assigns, on demand ; and if not paid when demanded, the purchaser may recover it in any court of competent jurisdiction, with costs and interest at the rate of twenty per cent, after such demand. The sureties of the treasurer shall pay the same on failure of said treasurer. And in default of payment by either, the town or plantation shall pay the same with costs and interest as aforesaid. R. S. c. 10, § 81 ; 84 Me. 190.

If no person having legal authority so to do redeems the same within the time aforesaid by paying the full amount required by this chapter, said treasurer shall deliver to the purchaser the deeds so lodged with him by the collector ; and if he willfully refuses to deliver such deed to such purchaser, on demand, after said two years and forfeiture of the land as aforesaid, he forfeits to said purchaser the full value of the property

so to be conveyed, to be recovered in an action of debt, with costs and interest as in other cases; the sureties of said treasurer shall make good the payment here required, in default of payment by the principal; and on the failure of both, the town is liable. R. S. c. 10, § 82.

Any non-resident owner of real estate sold under section seventy-six, having paid the taxes, costs, charges and interest as aforesaid, may, at any time within one year after making such payment, commence a suit against the town to recover the amount paid, and if on trial it appears that the money raised was for an unlawful purpose, he shall have judgment for the amount so paid. If not commenced within the year, the claim shall be forever barred. The suit may be in the supreme judicial or superior court, and the plaintiff recovering judgment therein shall have full costs, although the amount of damages is less than twenty dollars. R. S. c. 10, § 83; 58 Me. 391, 395; 68 Me. 357.

The treasurer's receipt or certificate of payment of a sufficient sum to redeem any lands taxed as aforesaid, shall be legal evidence of such payment and redemption. R. S. c. 10, § 84.

The municipal officers may employ one of their own number, or some other person, to attend the sale for taxes of any real estate, in which their town is interested, and bid therefor a sum sufficient to pay the amount due and charges, in behalf of the town, and the deed shall be made to it. R. S. c. 10, § 8; 61 Me. 551; 95 Me. 166.

In all cases where real estate has been sold for state, county or town taxes, the owner may, within the time allowed by law, pay the sums necessary to redeem the same, into the treasury of the state, county or town to which the tax is to be paid, and such payment seasonably made shall redeem the estate. The treasurer shall pay the amount so received by him to the person entitled thereto according to the records and documents in his office. R. S. c. 10, § 86.

In the trial of any action at law or in equity, involving the validity of any sale of real estate for non-payment of taxes, it shall be sufficient for the party claiming under it, in the first instance, to produce in evidence the collector's or treasurer's deed, duly executed and recorded, which shall be prima facie evidence of his title, and if the other party claims and offers evidence to show that such sale was invalid and ineffectual to convey the title, the party claiming under it shall have judgment in his

favor so far as relates to said tax title, if he then produces the assessment, signed by the assessors, and their warrant to the collector, and proves that such collector or treasurer complied with the requirements of law in selling such real estate; and in all such actions involving the validity of sales made after April twenty-six, eighteen hundred and ninety-five, the collector's return to the town clerk, the town clerk's record, or if lost or destroyed, said clerk's attested copy of such record, as provided in section eighty, shall be prima facie evidence of all facts therein set forth. R. S. c. 10, § 87; 27 Me. 293; 33 Me. 82; 51 Me. 600; 57 Me. 517; 58 Me. 392, 396; 59 Me. 346; 61 Me. 208, 433; 63 Me. 311, 381; 64 Me. 452; 68 Me. 357, 395; 69 Me. 520; 70 Me. 278; 71 Me. 237; 72 Me. 504; 73 Me. 383, 407; 74 Me. 25, 51; 84 Me. 379; 85 Me. 321; 89 Me. 337; 90 Me. 104.

Warrants for state taxes on organized plantations taxed by the state as wild lands shall be sent by the treasurer of state to the assessors of each plantation in which such lands are situated in the month of April of each year.

In the month of April of each year the county commissioners of each county shall issue to the assessors of each organized plantation taxed by the state as wild land their warrant for the amount of county taxes apportioned to said plantation. R. S. c. 10, § 88.

The assessors of such plantation shall add the amounts of said state and county taxes certified to them by the treasurer of the state and the county commissioners to their assessment for plantation purposes, and assess the same on the real and personal property in such plantation to the owner or person in possession in accordance with their valuation thereof, including such overlay, not exceeding five per cent thereof, as a fractional division renders convenient. R. S. c. 10, § 89.

In July of each year said assessors shall commit the same with a warrant in the usual form to a collector of taxes, to be elected by said plantation at its annual meeting, or in default thereof to be appointed by said assessors, directing him to collect and transmit the said state taxes to the treasurer of the state by December first next after the date of commitment, and also directing him to collect and transmit the said county taxes to the county treasurer by December first next after the date of commitment. R. S. c. 10, § 90.

Said collector shall give bond to the plantation in such sum and with such sureties as the assessors thereof require, and said assessors shall agree with him as to his compensation, which shall be paid by the plantation. R. S. c. 10, § 91.

Said collector shall settle with the assessors by the tenth day of December in each year, and return to them his collection list, showing the amounts received or unpaid on each tax in his list. On all such taxes then unpaid, interest shall be added from the first day of December preceding at twenty per cent until paid. The clerk of the plantation shall record in a book kept for that purpose such returned collector's list with the collector's return thereon showing the amounts received or unpaid on each tax in the list, which record shall be evidence of the facts therein stated. R. S. c. 10, § 92.

The lien on real estate created by section three of chapter nine for the payment of taxes assessed under the five preceding sections may be enforced at any time within one year from the time when said collection lists are returned to said assessors, in the following manner: The assessors may order the collector to bring an action of debt in the name of the plantation in the supreme judicial court in the county where the land lies, to collect such unpaid taxes with interest, against the person to whom the property is assessed, and the proceedings in such actions shall be the same as provided in section twenty-eight of this chapter, except that the preliminary notice and demand for payment of said tax as provided in said section shall not be required. R. S. c. 10, § 93.

Proceedings under the six preceding sections for the assessment and collection of taxes on organized plantations taxed by the state as wild lands, shall be in accordance with sections thirty-six, thirty-seven, thirty-eight, eighty-six and eighty-eight of chapter nine, so far as said sections are applicable; section sixty of chapter nine shall apply to such plantations. R. S. c. 10, § 94.

The treasurer of state may bring an action of debt in his own name to enforce the lien on real estate created by section three of chapter nine, to secure the payment of state and county taxes assessed under sections forty and forty-one of chapter nine upon lands not liable to be assessed in any town for which warrants are not issued under section eighty-eight of this chapter. Such action shall be begun after the expiration of eight months and within one year after the last publication of the advertisement

named in section forty-two of chapter nine. The proceedings shall be in accordance with section twenty-eight of this chapter, except that the preliminary notice and demand for payment of said tax as provided in said section shall not be required. R. S. c. 10, § 95.

In addition to the methods of collecting state, county and forestry district taxes provided by law, owners of land in unorganized townships shall be liable to pay such taxes to the treasurer of the state upon demand. If such taxes shall not be paid within thirty days after such demand, the treasurer of the state may collect the same, with interest as provided by law, by an action of debt in the name of the state. Such action shall be brought in the supreme judicial court in the county where such unorganized townships are located, and the attorney general may begin and prosecute such actions when thereto requested by the treasurer of the state. P. L. 1909 c. 218, § 1.

The demand herein provided for shall be sufficient if made by a writing mailed to such land owner or his agent at his usual post office address. In case such owner resides without the state, and has no agent within the state known to the treasurer of state, such demand shall be sufficient if made upon the state land agent. Such action shall be brought not less than thirty days after the giving or mailing of the demand herein provided for. The beginning of such action, obtaining execution and collecting the same shall be deemed a waiver of the forfeiture provided by section forty-three of said chapter nine. P. L. of 1909 c. 218, § 2.

CHAPTER XXXIII.

COLLECTOR OF TAXES.

Annual town meetings shall be held in March and the voters shall then choose by a major vote a treasurer and collector of taxes. Treasurers and collectors of towns shall not be selectmen or assessors, until they have completed their duties as treasurers and collectors and had a final settlement with the town. The treasurer and collector of taxes of cities and towns may be one and the same person. R. S. c. 4, § 12.

Collectors shall be sworn as similar officers chosen by a town, and shall receive the same compensation, unless otherwise agreed. R. S. c. 9, § 102.

If after the choice of the collector of taxes there is a vacancy in such office, the municipal officers may fill such vacancy by written appointment of a proper person, who shall be summoned by the constable to appear and take the oath of office as provided in section twenty-five of chapter four of the revised statutes. R. S. c. 4, § 15.

The municipal officers of towns shall require the treasurer thereof to give bond, with sufficient sureties, for faithful performance of the duties of his office, and if he neglects or refuses, it shall be deemed a refusal to accept the office, and the town shall proceed to a new choice, as in case of vacancy. R. S. c. 4, § 19.

Form of Bond.

Know all men by these presents, that we, A. B., of —, in the county of —, as principal, and C. D. and E. F., of said —, as sureties, are held and firmly bound unto the inhabitants of said town of —, in the sum of — dollars; to which payment, well and truly to be made, we bind ourselves, our heirs and executors, by these presents. Witness our hands and seals, this — day of —, A. D. 19—.

The condition of this obligation is such, that whereas the said A. B., treasurer of said town, has been appointed collector of taxes of said town, for the year 19—; now, if the said A. B. shall well and faithfully discharge all the duties of said office, then this obligation to be void; otherwise, to remain in full force and virtue.

A. B. [Seal.]

C. D. [Seal.]

E. F. [Seal.]

Every collector of taxes shall once in two months at least exhibit to the municipal officers, or where there are none, to the assessors of his town, a just and true account of all moneys received on taxes committed to him, and produce the treasurer's receipts for money by him paid; and for neglect, he forfeits to the town two and a half per cent on the sums committed to him to collect. R. S. c. 10, § 35.

The penalty imposed cannot be interposed by way of recoupment in defense to an action, by a collector of taxes to recover of the town his agreed compensation for collecting the town's taxes. 84 Me. 431.

Any collector of taxes, or his executor or administrator, may, after demand for payment, sue in his own name for any tax, in an action of debt, and no trial justice or judge of any municipal or police court before whom such suit is brought, is incompetent to try the same by reason of his residence in the town assessing said tax. Where before suit the person taxed dies or removes to any other town, parish or place in the state, or, being an unmarried woman, marries, the aforesaid demand is not requisite, but the plaintiff shall recover no costs unless payment was demanded before suit. R. S. c. 10, § 27; 50 Me. 377; 61 Me. 546; 77 Me. 55, 410; 82 Me. 156; 83 Me. 532; 86 Me. 365; 89 Me. 578.

A collector of taxes cannot compel payment by suit, except in those cases in which the statute expressly confers that right. An action cannot be maintained by a town collector, upon a promise to pay him a tax, in consideration that he will forbear to collect the same in the manner required by law, although by such neglect he becomes liable to account for the tax and actually pays it to the town. 50 Me. 376.

In order for a collector of taxes to maintain an action under the foregoing section he must show that he made a demand on the defendant for his taxes, so formal and explicit that the defendant would know that a suit might follow if he neglected to comply with the demand. A written request mailed to the person taxed is not sufficient. It should be a personal demand, made by the collector or some authorized agent, unless such a demand be excused by the absence of the debtor from home or by some other good reason. 77 Me. 54.

In an action against a tax-payer the plaintiffs cannot recover costs in the absence of proof of a demand made upon the defendant before action brought. 82 Me. 152.

An action may be maintained in the name of the collector of a village corporation. Such officer is included in the foregoing section. 83 Me. 530.

It is the duty of the tax collectors to collect, ordinarily at their own expense, the taxes committed to them for the compensation agreed upon. They may proceed by any of the methods provided by statute, and, if they deem it advisable, they may commence actions of debt in their own name. But there may be occasions when for special reasons, such as the denial of liability, a question as to the validity of the assessment and for other reasons, it would be equitable and proper for the city or town to

allow a suit to be brought in its name, pay the expenses and be liable for costs in case of defeat. As to the sufficiency of these reasons in any case, the selectmen of the town are the sole judges. If they see fit they may in writing direct an action of debt to be commenced in the name of such city or of the inhabitants of such town or plantation against the party liable. 86 Me. 365.

It is essential to show demand as well as a legal tax. Failures to do either, and the verdict would be the same. Both allegations in the declaration must be established to make out a *prima facie* case. 89 Me. 579.

The lien on real estate created by section three of chapter nine may be enforced in the following manner, *provided, however*, that in the inventory and valuation upon which the assessment is made, there shall be a description of the real estate taxed, sufficiently accurate to identify it. Any officer to whom a tax has been committed for collection, except a collector appointed under section ninety, may, after the expiration of eight months from the date of commitment to him of said tax, give to the person against whom said tax is assessed, or leave at his last and usual place of abode, if then a resident of the town where said real estate lies, a notice in writing signed by said officer, stating the amount of such tax, describing the real estate on which the tax is assessed, and demanding the payment of such tax within ten days after service of such notice. After the expiration of said ten days, in case of a resident, and in all cases within one year after the date of commitment to him of said tax, such officer may bring an action of debt for the collection of said tax, in his own name, in the county where the land lies, against the person against whom said tax is assessed. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other writs of attachment to enforce liens on real estate. The declaration in such action shall contain a statement of such tax, a description of the real estate contained in said notice, and an allegation that a lien is claimed on said real estate to secure the payment of the tax. If no service is made upon the defendant, or if it shall appear that other persons are interested in such real estate, the court shall order such further notice of said action as appears proper, and shall allow such other persons to become parties thereto. If it shall appear upon trial of said action that such tax was legally assessed on said real estate, and is unpaid, and that there is an

existing lien on said real estate for the payment of such tax, judgment shall be rendered for such tax, interest and costs of suit against the defendants and against the real estate attached, and execution issued thereon to be enforced by sale of such real estate in the manner provided for a sale on execution of real estate attached on original writs. *Provided, however,* that when the officer sells the real estate on such execution he shall sell the least undivided fractional part thereof that any person bidding will take, and pay the amount due on the execution with all necessary charges of sale; and he shall convey by his deed to the purchaser such part so sold to him, subject to redemption according to law, and the deed shall be construed to convey the right of entry and seizin in such part in common and undivided of such property assessed. In all actions brought in the supreme judicial and superior courts under the provisions of this section or of sections ninety-three or ninety-five, full costs shall be recovered notwithstanding the amount of the judgment be twenty dollars or less. Any person interested in said real estate may redeem the same at any time within one year after the sale of the same by the officer on such execution, by paying the amount of such judgment and all costs on such execution with interest at the rate of ten per cent a year. This section shall not affect any other provision of law for the enforcement and collection of taxes upon real estate. R. S. c. 10, § 28; 89 Me. 337, 384.

In addition to other provisions for the collection of taxes legally assessed, the mayor and treasurer of any city, the selectmen of any town, and the assessors of any plantation to which a tax is due, may in writing direct an action of debt to be commenced in the name of such city or of the inhabitants of such town or plantation, against the party liable; but no such defendant is liable for any costs of suit, unless it appears by the declaration and by proof, that payment of said tax had been duly demanded before suit. And no execution shall run against the body of any person issued on a judgment recovered for the collection of any poll tax. R. S. c. 10, § 65; 66 Me. 198; 67 Me. 261; 70 Me. 304; 71 Me. 404; 74 Me. 283-4; 76 Me. 550; 78 Me. 278; 79 Me. 183; 82 Me. 157; 83 Me. 229; 84 Me. 505; 86 Me. 318, 364; 87 Me. 361; 89 Me. 154, 578, 582; 90 Me. 182.

Form of Order for Action of Debt for Collection of Taxes:

Town of ———. ———, 19—.

To ———, of ———:

You are hereby directed to commence in the name of the city of — [or inhabitants of the town of —, or — plantation] an action of debt against —, of —, for the collection of taxes legally assessed against said —, as follows: [*State the facts.*]

———, } Mayor and Treasurer of the City of ———.
 ———, } [*Selectmen of the Town of ———.*]
 ———, } [*Or Assessors of ——— Plantation.*]

(NOTE: As it is necessary for the maintenance of an action under the foregoing section to prove that written direction to bring suit has been given the writ must allege that such written direction has been given. 89 Me. 156, 582.)

If an action be brought under this act, it must be regarded as a waiver of procedure by arrest or distraint; that resort cannot be had to both processes at the same time. This is an additional, not a concurrent remedy. 67 Me. 260.

The only remedy which a person, who is a taxable inhabitant in the place where he is assessed, has for obtaining relief from an assessment for personal property which he does not own, is by a petition to the assessors with the right of appeal from them to the county commissioners; if sued for the taxes under the foregoing provision and he has obtained no abatement from assessors or commissioners, the defense is not open to him. 79 Me. 183.

Where a person is sued for his taxes, he cannot defeat the suit upon the ground that the recorded list of assessments, upon which his assessment appears, is not signed by the assessors; the papers in the collector's hands are sufficient proof of the assessment. The neglect of assessors to certify an assessment of the state tax, as required by statute, is merely an omission to observe a directory order which the law may overlook without injury to anyone; it does not render an assessment void; it may be supplied by amendment, if necessary.

It is a general rule that an illegal provision in a warrant, separable from its other provisions, will not vitiate the instrument, unless the direction is acted upon. An unauthorized mandate in the warrant to a collector to collect interest on the assessments, not enforced or attempted to be, does not affect in other respects the validity of the warrant. 79 Me. 183.

In an action of debt to recover a tax assessed upon personal property, it is a material averment that the defendant was an inhabitant of the plaintiff town, and it is incumbent upon the plaintiff to establish it by competent evidence. 83 Me. 228.

At the trial of any action for the collection of taxes, or of any action at law or in equity involving the validity of any sale of real estate for non-payment of taxes, if it shall appear that the tax in question was lawfully assessed, the court may permit the collection or other officer to amend his record, return or deed in accordance with the fact, when circumstantial errors or defects appear therein; *provided*, that the rights of third parties are not injuriously affected thereby. And if a deed be so amended, and the amended deed be thereupon recorded, it shall have the same effect as if it had been originally made in its amended form. R. S. c. 10, § 29.

If a person assessed in accordance with the provisions of chapter ten of the revised statutes for twelve days after demand refuses or neglects to pay his tax and to show the constable or collector sufficient goods and chattels to pay it, such officer may arrest and commit him to jail, until he pays it, or his discharge by law. R. S. c. 10, § 20; 19 Me. 328; 47 Me. 172; 49 Me. 430; 61 Me. 556; 71 Me. 406.

If the assessors think that there are just grounds to fear that any person so assessed may abscond before the end of said twelve days, the constable or collector may demand immediate payment, and on refusal, he may commit him as aforesaid. R. S. c. 10, § 21.

When a tax is made payable by instalments, and any person, who was an inhabitant of the town at the time of making such tax, and assessed therein, is about to remove therefrom before the time fixed for any payment, the collector or constable may demand and levy the whole tax, though the time for collecting any instalment has not arrived; and in default of payment he may distrain for it, or take the course provided in section twenty. R. S. c. 10, § 22.

When new constables or collectors are chosen and sworn before the former officers have perfected their collections, the latter shall complete the same, as if others had not been chosen and sworn. R. S. c. 10, § 23.

For non-payment of taxes, the collector or constable may distrain the shares owned by the delinquent in the stock of any

corporation; and the same proceedings shall be had as when like property is seized and sold on execution. R. S. c. 10, § 24.

The proper officer of such corporation, on request of such constable or collector, shall give him a certificate of the shares or interest owned by the delinquent therein, and issue to the purchaser certificates of such shares according to the by-laws of the corporation. R. S. c. 10, § 25.

When a person taxed in a town in which he was living at the time of assessment, removes therefrom before paying his tax, such constable or collector may demand it of him in any part of the state, and, if he refuses to pay, may distrain him by his goods, and for want thereof may commit him to the jail of the county where he is found, to remain until his tax is paid; and he shall have the same power to distrain property and arrest the body in any part of the state, as in the place where the tax is assessed. R. S. c. 10, § 26.

Any person arrested or imprisoned on a warrant for the collection of a public tax, and every constable, collector or deputy sheriff, arrested or imprisoned for default in collecting taxes committed to him, has the privileges, and is subject to the obligations of this chapter, as if arrested or imprisoned on execution for debt; and for all purposes relating thereto, the assessors of the town for the time being where the tax was assessed, shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate of discharge; but nothing herein exempts any property from distress for taxes, except those implements, tools and articles of furniture which are exempt from attachment for debt. R. S. c. 114, § 66; 19 Me. 326; 39 Me. 346; 73 Me. 283.

An order drawn by the selectmen in favor of the collector for certain abatements of taxes, is not to be considered an abatement which is to enure to the benefit of those named in the order, they not being parties to the drawing of the same; but is a mere order to the treasurer to release the collector in his settlement with him from accounting for the several sums specified in said order. 19 Me. 322.

A poor debtor's bond given to obtain a release from an arrest for taxes should run to those persons who were assessors of the town at the time the arrest was made, to be a valid statute bond; but if it run to those persons who were assessors at the time the tax was assessed, it will be a valid bond at common law. 73 Me. 282.

When the owner of improved lands living in this state, but not in the town where the estate lies, is taxed, and neglects for six months after the lists of assessment are committed to an officer for collection, to pay his tax, such officer may distrain him by his goods and chattels, and for want thereof may commit him to jail in the county where he is found. R. S. c. 10, § 32; 25 Me. 362; 47 Me. 172; 74 Me. 284.

When the owner or possessor of goods, wares and merchandise, logs, timber, boards and other lumber, stock in trade, including stock employed in the business of any of the mechanic arts, horses, mules, neat cattle, sheep or swine, resides in any other town than the one in which such personal property is kept and taxed, the constable or collector having a tax on any such property for collection, may demand it of such owner or possessor in any part of the state, and on his refusal to pay, may distrain him by his goods, and for want thereof, may commit him to jail in the county where he is found, until he pays it, or is discharged by law. R. S. c. 10, § 33.

When a person imprisoned for not paying his tax, is discharged, the officer committing him shall not be discharged from such tax without a vote of the town, unless he imprisoned him within one year after the taxes were committed to him to collect. R. S. c. 10, § 63; 61 Me. 557; 82 Me. 44.

A town cannot by vote increase, diminish or vary the duties which the tax collector owes to the public, nor relieve him in case of his neglect, except in the very few cases where the statute so provides. There is an implication, perhaps, in the above section, that the town may relieve a collector who has made a fruitless arrest after one year. In general, the negligent officer is dealt with, not by the town, but by other public officers clothed with authority for that purpose. 82 Me. 44.

A collector is not entitled to anything for committing a debtor after one year from the time the tax is committed to him. 61 Me. 552.

In case of distress or commitment for non-payment of taxes, the officer shall have the same fees which sheriffs have for levying executions, except that travel, in case of distress, shall be computed only from the dwelling-house of the officer to the place where it is made. R. S. c. 10, § 12.

For commitments for non-payment of taxes, the officer shall have the same fees as for levying executions, but his travel shall

be computed only from his dwelling-house to the place of commitment. R. S. c. 10, § 64.

When an officer appointed to collect assessments by virtue of a warrant, for want of property arrests any person and commits him to jail, he shall give an attested copy of his warrant to the jailer, and certify, under his hand, the sum that he is to pay as his tax and the costs of arresting and committing, and that for want of goods and chattels whereon to make distress, he has arrested him; and such copy and certificate are a sufficient warrant to require the jailer to receive and keep such person in custody, until he pays his tax, charges, and thirty-three cents for the copy of the warrant; but he shall have the rights and privileges, mentioned in section fifty-four. R. S. c. 10, § 61; 71 Me. 406; 77 Me. 24.

When a person, committed for non-payment of taxes due to the state or county, is discharged by virtue of any statute for the relief of poor prisoners confined in jail for taxes, the town whose assessors issued the warrant by which he was committed shall pay the whole tax required of it. R. S. c. 10, § 62.

Any collector impeded in collecting taxes, in the execution of his office, may require proper persons to assist him in any town where it is necessary, and any person refusing when so required, shall, on complaint, pay not exceeding six dollars at the discretion of the justice before whom the conviction is had, if it appears that such aid was necessary; and on default of payment, the justice may commit him to jail for forty-eight hours. R. S. c. 10, § 34.

Nothing in the preceding sections extends to sales made by sheriffs, deputy sheriffs, coroners, constables, tax collectors, executors or administrators, or any other person authorized to sell goods, chattels or lands, by order of any court or judge of probate. R. S. c. 36, § 8.

Every collector or constable, required to collect taxes, shall receive a warrant from the selectmen or assessors of the kind hereinbefore mentioned, and shall faithfully obey its directions. R. S. c. 10, § 13.

A warrant may be effective if it does not follow strictly the form prescribed by the statute. If it be "in substance" conformable to the law, that will be sufficient. 3 Me. 301.

Where a tax bill was not signed by the assessors it was *Held*, that the collector did not have sufficient authority to collect it. 4 Me. 72.

Where a collector's bond recites that he was duly chosen and was conditioned for the faithful discharge of his duty, it was *Held*, that in an action on the bond for failure to pay over moneys collected, the sureties were estopped from setting up as a defense that the meeting which elected the collector was not legally held. 8 Me. 334.

An agreement between a town and one of its inhabitants that he should collect the taxes for a fixed compensation on being chosen sole collector and constable, performed on the part of the town, is a legal contract and binding on the collector. 15 Me. 28.

The collector is bound to obey a warrant in due form and issuing from the assessors, though they may not have complied with every requisition of law anterior to issuing it. 20 Me. 199.

The collector of taxes of a town has the same powers and is under the same obligations to collect school district taxes as in cases of town taxes. 31 Me. 272.

A warrant containing no terms giving authority to distrain or commit is defective and a clause purporting to extend to it the powers granted in a previous one to the same person in due form, would give no greater authority than would a similar reference to the section of the statute from which all power in the premises is derived. 41 Me. 538.

Defects in a warrant or tax list may be a good reason for not executing the warrant, but a collector having collected money without objection by the tax-payers is liable to account therefor. 44 Me. 49.

Where the same person was collector of taxes for several successive years and failed to pay over or account for a portion of the taxes committed to him the first year, moneys collected and paid over by him arising from taxes of subsequent years cannot be appropriated to make up the deficiency of the first year, so as to affect the relative rights and duties of sureties on his several bonds. 47 Me. 515.

The assessors shall require such constable or collector to give bond for the faithful discharge of his duty, to the inhabitants of the town, in such sum, and with such sureties, as the municipal officers approve; and bonds of collectors of plantations shall be given to the inhabitants thereof, approved by the assessors, with like conditions. R. S. c. 10, § 14; 1 Me. 250; 3 Me. 301; 4 Me. 75; 8 Me. 341; 15 Me. 28, 29; 20 Me. 202; 31 Me. 281;

41 Me. 538 ; 44 Me. 50 ; 47 Me. 518 ; 50 Me. 40, 351 ; 53 Me. 254 ; 55 Me. 501 ; 57 Me. 62 ; 61 Me. 555 ; 64 Me. 403 ; 68 Me. 161, 162 ; 69 Me. 334, 369 ; 73 Me. 181.

See decisions under chapter on Collection of Taxes.

Such bond shall, after its approval and acceptance, be recorded by the clerk, in the town or plantation records, and such record shall be prima facie evidence of the contents of such bond, but a failure to so record shall be no defense in any action upon such bond. R. S. c. 10, § 15.

When a tax is paid to a collector or constable, he shall give a receipt therefor on demand ; and if he neglects or refuses so to do, he forfeits five dollars to the aggrieved party, to be recovered in an action of debt. R. S. c. 10, § 16.

All plantations, required to pay any portion of the public taxes, have all the powers of towns so far as relates to the choice of constables and collectors and the requiring bonds from them. R. S. c. 10, § 17.

If a person refuses to pay any part of the tax assessed against him in accordance with this chapter, the person whose duty it is to collect the same, may distrain him by any of his goods and chattels not exempt, for the whole or any part of his tax, and may keep such distress for four days at the expense of the owner, and if he does not pay his tax within that time, the distress shall be openly sold at vendue by the officer for its payment. Notice of such sale shall be posted in some public place in the town, at least forty-eight hours before the expiration of said four days. R. S. c. 10, § 18.

A collector of taxes legally qualified, acting within the scope of his powers, under a warrant from competent authority, may justify thereby the seizure and sale of the property of such delinquents as refuse to pay the taxes assessed against them. His justification will not fail by reason of any errors in the assessment or in the proceedings of the town, at the meeting at which he was chosen. And the return of his doings, upon the warrant, is prima facie evidence of the facts therein stated. 40 Me. 526.

If a collector of taxes keeps property, which he has seized on his warrant, beyond the time within which it could be legally sold, he thereby becomes a trespasser *ab initio* ; and the owners may replevy it. 49 Me. 356.

The collector has no authority to sell any additional articles after enough have been sold to pay the tax committed to him and the expense of the sale. If he does so he does not become a trespasser *ab initio* as to any article seized except such as he has sold in excess of his authority. His warrant protects him so far as he has not exceeded or abused its authority. 61 Me. 400.

Inasmuch as a collector's warrant protects him against all illegalities but his own, proof of errors in the assessment of a tax cannot be considered in a suit against one entrusted with its collection. 62 Me. 459.

A collector is not bound to keep or sell distrained property within the limits of the town in which it is first seized by him. 62 Me. 459.

It is no objection to the legality of the collector's proceedings that one of the four days during which he kept the distress was Sunday. 62 Me. 459.

The officer, after deducting the tax and expense of sale, shall restore the balance to the former owner, with a written account of the sale and charges. R. S. c. 10, § 19.

The return of the collector of taxes upon his warrant, of his proceedings on the distrain and sale of chattels for the payment of taxes, is *prima facie* evidence of his having tendered to the former owner the overplus arising from such sale beyond the amount of the tax and charges. 17 Me. 100.

If the collector receives a surplus of money upon the sale of property for a tax and omits to render to the owner a written account of the sale and charges, he is a trespasser *ab initio*. 32 Me. 557.

A collector is liable in trespass if he sells upon his warrant a greater number of the chattels than sufficient to pay the tax, with the fees and charges. 32 Me. 559.

A collector who after selling a distress, fails to restore the balance to the former owner, after deducting the unpaid taxes and legal expenses of sale, is a trespasser *ab initio* 59 Me. 296.

If such collector or constable refuses to deliver the bills of assessment, and to pay all moneys in his hands collected by him, when duly demanded, he forfeits two hundred dollars to the town or parish, as the case may be, and is liable to pay what remains due on said bills of assessment. R. S. c. 10, § 37; 57 Me. 62.

In general, a collector of taxes becomes chargeable for all taxes committed to him, in respect to which he has not exhausted his authority to enforce payment during the period allotted for their collection, if the town insist upon his liability, and require payment from him. It is no defense to a suit on a collector's bond for such delinquency, and that the individuals against whom said taxes were assessed were not, at any time after the tax bills were placed in his hands, of sufficient ability to pay the same, and that a levy of a warrant of distress upon them would have been unavailing. 57 Me. 62.

When the tax of any person named in said assessment does not thereby appear to have been paid, but such person declares that it was paid to the former collector, the new collector shall not distrain or commit him, without a vote of such town or parish first certified to him by its clerk. R. S. c. 10, § 57; 57 Me. 62.

When a collector having taxes committed to him to collect, has removed; or in the judgment of the municipal officers, assessors, or treasurer of a town, or committee or treasurer of a parish, is about to remove from the state before the time set in his warrant to make payment to such treasurer; or when the time has elapsed, and the treasurer has issued his warrant of distress; in either case, said officers or committee, may call a meeting of such town or parish, to appoint a committee to settle with him for the money that he has received on his tax bills, to demand and receive of him such bills, and to discharge him therefrom; said meeting may elect another constable or collector, and the assessors shall make a new warrant and deliver it to him with said bills, to collect the sums due thereon, and he shall have the same power in their collection as the original collector. R. S. c. 10, § 36; 57 Me. 62; 62 Me. 461; 82 Me. 45.

When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. R. S. c. 10, § 11.

The collector of a town, to whom has been committed a tax upon the stock of any bank or other corporation, except a manufacturing corporation or corporation mentioned in section twenty-six, shall, within thirty days after the bills of assessment are delivered to him, cause a written notice to be delivered to the cashier or president thereof, stating the description of stock taxed, to whom assessed, if stated in the bills, and the tax thereon. No dividend shall be paid on such stock after such notice until the tax and all costs thereon are paid. The cashier

or treasurer may pay such tax, and payment shall constitute a charge in offset against any dividend thereon. Should such tax remain unpaid for ninety days after such notice, the collector may sell such stock in the manner specified in sections twenty-four and twenty-five of chapter ten. For the purpose of collecting taxes on bank or other stock, collectors may act in any town. R. S. c. 9, § 33; 103 Me. 418.

All county taxes hereafter assessed shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the county treasurers of their respective counties. R. S. c. 10, § 6.

If the proceeds of such sale do not satisfy such sum and legal charges, the treasurer who issued the warrant, shall issue an alias warrant for the sum remaining due; and the officer executing it shall arrest such deficient officer, and proceed as on an execution for debt; and such deficient officer shall have the same rights and privileges as a debtor arrested or committed on execution in favor of a private creditor. R. S. c. 10, § 54.

The assessors having written notice from such treasurer of the failure of their constable or collector, shall forthwith, without any further warrant, assess the sum so due upon the inhabitants of their town as the sum so committed was assessed, and commit it to another constable or collector for collection; and if they neglect, the treasurer of state shall issue his warrant against them for the whole sum due from such constable or collector, which shall be executed by the sheriff or his deputy, as other warrants issued by such treasurer. If after such second assessment, the tax is not paid to the treasurer within three months from the date of its commitment, the treasurer may issue his warrant to the sheriff of the county requiring him to levy it on real and personal property of any inhabitants of the town, as hereinbefore provided. R. S. c. 10, § 45; 69 Me. 458.

When plantations neglect to choose constables or collectors, or those chosen and accepting their trust neglect their duty, such plantations shall be proceeded against as in the case of deficient towns; and such deficient constables or collectors are liable to the same penalties, and shall be removed in the same manner, as deficient constables and collectors of towns. R. S. c. 10, § 59.

If a deficient constable or collector has no estate which can be distrained, and his person cannot be found within three months after a warrant of distress issues from the treasurer of state, or,

if being committed to jail, he does not within three months satisfy it, his town shall, within three months more, pay to the state the sums due from him. R. S. c. 10, § 44.

When the collector is a defaulter and has not paid the state tax, the town may advance the balance of the state tax deficit to the state treasurer. The collector and sureties are liable for such advance. 69 Me. 451.

Such deficient collector or constable shall at all times be answerable to such inhabitants for all sums which they have been obliged to pay by means of his deficiency, and for all consequent damages. R. S. c. 10, § 46.

The treasurer of state shall issue a warrant of distress, signed by him, against any constable or collector to whom a tax has been committed for collection, who is negligent in paying into the public treasury the money required within the time limited by law; and shall direct it to the sheriff of the county in which such negligent officer lives, or to his deputy, returnable in sixty days from its date, to cause the sum due to be levied, with interest from the day fixed for payment, and fifty cents for the warrant, by distress and sale of such deficient officer's real or personal estate, returning any overplus that there may be, and for want thereof, to commit him to jail until he pays it; and the sheriff shall obey such warrant. Warrants not satisfied may be renewed for the amount unpaid, and shall be of like validity and executed in like manner. R. S. c. 10, § 41; 19 Me. 374; 69 Me. 458; 74 Me. 410; 82 Me. 45.

When the time for collecting a state tax has expired, and it is unpaid, the treasurer of state shall, at the request of the municipal officers of any town, issue his execution against the collector thereof. R. S. c. 10, § 42; 82 Me. 45.

If a collector of any town fails to pay the county tax for forty days after the time fixed therefor, the county treasurer shall issue his warrant against him in due form of law, returnable in three months from its date, directed to the sheriff or his deputy, requiring him to collect the tax, with six per cent interest thereon from the time it was payable, fifty cents for the warrant, and his own legal fees. R. S. c. 10, § 43.

If a collector or constable of a town or parish dies without settling his accounts of taxes committed to him to collect, his executor or administrator, within two months after his acceptance of the trust, shall settle with such assessors for what was received by the deceased in his lifetime; with the amount so

received, such executor or administrator is chargeable as the deceased would be if living; and if he fails so to settle, when he has sufficient assets in his hands, he shall be chargeable with the whole sum committed to the deceased for collection. R. S. c. 10, § 47.

When any constable or collector of taxes is taken on execution under this chapter, the assessors may demand of him a true copy of the assessments, which he received of them and then has in his hands unsettled, with the evidence of all payments made thereon; and if he complies with this demand, he shall receive such credit as the assessors, on inspection of the assessment, adjudge him entitled to, and account for the balance; but if he refuses, he shall forthwith be committed to jail by the officer who so took him, or by a warrant from a justice of the peace, to remain there until he complies; and the assessors shall take and use copies of the record of assessments instead of the copies demanded of him. R. S. c. 10, § 55; 62 Me. 461.

The same town or parish may, at any time, proceed to the choice of another collector, to complete the collection of the assessments, who shall be sworn and give the security required of the first collector; and the assessors shall deliver to him the uncollected assessments, with a proper warrant for their collection, and he shall proceed as before prescribed. R. S. c. 10, § 56; 57 Me. 62; 62 Me. 461.

The collector or constable, and the town treasurer, or treasurer and collector, if one person is both, each have the same powers and are subject to the same duties and obligations in relation to free high school precinct taxes, as to town taxes; and they and the assessors shall be allowed by the precinct for their services, a compensation proportionate to what they receive from the town for similar services. R. S. c. 15, § 70; 31 Me. 281; 41 Me. 247; 67 Me. 240.

When a constable or collector of taxes dies, becomes insane, has a guardian, or by bodily infirmities is incapable of performing the duties of his office before completing the collection, the municipal officers may demand and receive the tax bills of any person in possession thereof, and deliver them to the new collector. R. S. c. 10, § 38; 62 Me. 461; 75 Me. 248; 82 Me. 45; 87 Me. 222.

A town collector failed to collect a portion of the taxes committed to him. Among the uncollected were taxes upon persons and personal property which were properly assessed, and

also a large amount of taxes upon real estate, assessed under defective and illegal descriptions. The collector complained that, by this insufficient assessment of such real estate, he was deprived of one mode or arm of power by which the collection of that portion of the taxes could be enforced. This fact, after the collector has received a portion of both the legal and illegal taxes, does not excuse him from a further collection of the legal taxes remaining unpaid. When the collector accepts a warrant with the bills of assessment, and collects a portion of the taxes, he is under legal obligation to collect of the remainder so much as are legally assessed. If the rule is otherwise, it might just as well be decided that collectors may collect taxes or not, as they please; for we well know that scarcely a city or town in this state, if even one, has ever placed in the hands of its collectors perfect assessments upon all its real estate. Certainly, a sound public policy will not allow a collector to proceed so far as to gather all the taxes which may be obtained readily and easily, and receive his commission upon them, and refuse to collect the rest of the taxes legally assessed. 75 Me. 246.

The real relation between the collector and the town is that of principal and agent. The agent need not enter upon the work assigned to him, if there be any reasonable objection to it. But entering upon the execution of his duties, he has no right to leave those duties half performed. He is excusable for non-collection, only so far as the town fails to furnish him full and sufficient means with which to enforce collection. The collector cannot dictate as to what persons or what property shall be assessed. He takes his chances as to that. His compensation is regulated accordingly. If property is omitted from assessment, it is no concern of his. If real estate is defectively assessed, it can make no stronger case for him than if not taxed at all. Property illegally taxed may well be regarded as in the condition of property omitted from taxation. So, assessors may make new assessments sometimes: may abate assessments under some circumstances; may correct errors in both warrants and assessments in some cases; and none of these steps taken by the assessors will exonerate a collector from the performance of the duties undertaken by him. 75 Me. 247.

A collector cannot be obliged to act under an illegal warrant, nor has he all the means furnished by law to collect a tax upon real estate when such estate is not properly and sufficiently described. But so far as taxes are concerned which he has full

and legal power to collect, if he enters upon a discharge of his official duties, he should complete those duties at least to the extent of the power conferred. 75 Me. 248.

The town cannot by vote increase, diminish or vary the duties which the tax collector owes to the public, nor relieve him in case of his neglect, except in the very few cases where the statute so provides. There is an implication, perhaps, in the revised statutes, that the town may relieve a collector who has made a fruitless arrest after one year. In general the negligent collector is dealt with, not by the town, but by other public officers clothed with authority for that purpose. The assessors are authorized by statute in certain contingencies to take his tax warrant from him. The state, county and town treasurers may each issue his warrant of distress against a delinquent or slothful collector. All these officers proceed, not under any vote of the town but independent of it and under statute authority. It would be their duty to act when the occasion arises, even in spite of a vote of the town. When a tax collector has once received a legal tax warrant, he becomes chargeable with the whole amount of the tax, state, county and town. He must account in money to each treasurer for the amount ordered to be paid to him. This liability is not a private debt due to the town as a corporation which the corporation may release. It is an official liability to the public, which he can acquit himself of, only by executing his warrant. If he neglects to execute his warrant, his liability to pay to the treasurers the amounts due them, is as living and binding as if he had collected the money. His payments to the treasurers are general, on account of the whole sum ordered to be paid each, and not particular, on any individual tax. His warrant commands him to pay over a certain gross amount, not any particular taxes, to each treasurer. Any money he officially pays the treasurer, he pays on account of, and to diminish the gross sum, this liability. If he be dilatory his own money or property can be taken on a treasurer's warrant of distress, and no vote of the town can restrain the treasurer or restore the money. If he be dilatory in collecting, and voluntarily pays his own money to the treasurer without waiting for the warrant of distress to be issued, he only does his official duty, only pays what he was bound to pay, and could be compelled to pay. If no vote of the town can restrain the treasurer from compelling payment, it would seem that no vote of the town can force him to restore what has been voluntarily paid him by the collector on account

of his official liability. In neither case, does the collector acquire any right to repayment from his subsequent omission to collect of the tax-payer. Without the execution or revocation of his warrant, the tax collector seems to have no claim in law, morals, or good conscience, either to be excused from failure to collect or to receive out of the town treasury sums he has paid under his liability, though in anticipation of collection. Such a claim on its face, whatever the particular facts, does not come within the purview of town meetings. If a town has no power to raise money from taxes, to restore a gift voluntarily made to the town by one of its citizens, much less has it power to raise money from taxes, to restore to a public officer money he has paid to the town treasurer under an official obligation to do so. 82 Me. 45.

When it appears that such insane or disqualified constable or collector had paid to the treasurer a larger sum than he had collected from the persons in his list, the assessors in their warrant to such new constable or collector, shall direct him to pay such sum to the guardian of such insane, or to such disqualified constable or collector. R. S. c. 10, § 40.

The collector of taxes for any town upon receiving an application in due form as provided in the preceding section, accompanied by such applicant's state license shall forthwith give notice thereof to the assessors of said town. Said assessors, or a majority of them, shall as soon as practicable examine the stock of goods described in such application, and shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding taxation in said town. The payment of said local license fee to said collector shall authorize such applicant who has complied with all other requirements of law to sell within the limits of said town, such goods, wares and merchandise as are described in his application, and for that purpose to carry in stock in said town, goods only of the kind or line specified in his application, and not to exceed in amount at any one time the valuation on which his local license fee for such town was computed, and to continue in force so long as such licensee shall in good faith continuously keep, offer and expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the first day of April next following the date of application. Any itinerant vendor, who after

applying or paying for a local license shall increase his stock kept, offered or exposed for sale in the town for which such local license fee was paid above the valuation on which such local license fee was computed, without first making seasonable written application to the collector of such town for a supplemental license for such excess of stock shall be fined not less than twenty, nor more than fifty dollars, and for each day such excess of stock is kept, offered or exposed for sale without payment of local license fee therefor shall be fined not less than twenty, nor more than fifty dollars, and forfeits his state license. Supplemental licenses shall be applied for, and the fees therefor shall be computed, certified and collected in the manner provided for local license fees. R. S. c. 45, § 7.

Every town in which is kept, exposed or offered for sale an itinerant vendor's stock of goods has a lien on such goods for the amount due such town for local license fee on such stock to be enforced by suit and attachment within ten days from the time such goods were first publicly offered or exposed for sale in such town. When any person liable therefor neglects or refuses to pay the local license fee provided in section seven the tax collector of the town to which such license fee is due may maintain an action of debt by writ of attachment or trustee process therefor in the name of such town or in his own name, but for the benefit of such town. Tax collectors, police officers and constables shall prosecute for violations of the provisions hereof relating to itinerant vendors, in their respective towns, and shall report such violations promptly to the assessors for the purpose of computing and certifying such local license. R. S. c. 45, § 9.

If a public officer, collector of taxes, or an agent, clerk or servant of a public officer or tax collector, embezzles or fraudulently converts to his own use, or loans or permits any person to have or use for his own benefit without authority of law, any money in his possession or under his control by virtue of his office or employment by such officer, he is guilty of larceny and shall be punished accordingly; and whoever knowingly receives from a public officer, collector of taxes or his clerk, servant or agent, with intent to convert the same to his own use without authority of law, any money in the possession or under the control of such officer by virtue of his office, is guilty of larceny and shall be punished accordingly. But the foregoing provisions in relation to public officers, collector of taxes, their clerks, servants or agents, shall not apply to deposits by such officer in any bank, nor to any advances made towards the salary of such

officer, nor to any person in the employment of the state or to whom the state is indebted, if the sums advanced do not exceed the sum due him. R. S. c. 121, § 8; 62 Me. 108; 69 Me. 28, 364; 70 Me. 265; 90 Me. 144; 95 Me. 183; 101 Me. 158.

The affidavit of any disinterested person as to posting notifications required for the sale of any land to be sold by the sheriff or his deputy, constable or collector, in the execution of his office, may be used in evidence in any trial to prove the fact of notice; if such affidavit, made on one of the original advertisements, or on a copy of it, is filed in the registry of the county or district where the land lies, within six months. R. S. c. 10, § 70.

Organized plantations shall hold their annual meeting in March, and choose a clerk, three assessors, treasurer, collector of taxes, constable, superintending school committee, one or more surveyors of lumber, and two or more fence viewers; and when money is raised for repair of ways and bridges, may choose one or three road commissioners, as towns may do. R. S. c. 4, § 118.

Assessors of plantations shall be considered the selectmen thereof, for the purpose of performing such duties as selectmen of towns perform. Treasurers, collectors and constables of plantations, shall give such bond as such officers of towns are required to give, to be approved in like manner. The valuation of property for the assessment of taxes in plantations, as well as the assessment, collection and disposal thereof, shall be the same as in towns. R. S. c. 4, § 121; 20 Me. 298.

Laws relating to calling, notifying and conducting town meetings, and to the elections, appointment, qualification, duties, powers, compensation, liabilities and penalties for official neglect and misconduct of town officers, apply to plantations and their officers, so far as applicable thereto, except when specially otherwise provided. Voters in plantations are liable to the same penalties for unlawful voting as voters in towns. R. S. c. 4, § 120. 56 Me. 31.

In July of each year said assessors shall commit the same with a warrant in the usual form to a collector of taxes, to be elected by said plantation at its annual meeting, or in default thereof to be appointed by said assessors, directing him to collect and transmit the said state taxes to the treasurer of the state by December first next after the date of commitment, and also directing him to collect and transmit the said county taxes to the

county treasurer by December first next after the date of commitment. R. S. c. 10, § 90.

Said collector shall give bond to the plantation in such sum and with such sureties as the assessors thereof require, and said assessors shall agree with him as to his compensation, which shall be paid by the plantation. R. S. c. 10, § 91.

Said collector shall settle with the assessors by the tenth day of December of each year, and return to them his collection list, showing the amounts received or unpaid on each tax in his list. On all such taxes then unpaid, interest shall be added from the first day of December preceding at twenty per cent until paid. The clerk of the plantation shall record in a book kept for that purpose such returned collector's list with the collector's return thereon showing the amounts received or unpaid on each tax in the list, which record shall be evidence of the facts therein stated. R. S. c. 10, § 92.

Plantations have the same powers and liabilities as towns for electing superintending school committees, superintendents of schools, treasurers and collectors, and for raising, assessing and collecting school money, to be apportioned and expended as in towns. The assessors of plantations may take a census of the inhabitants thereof, at the expense of the plantation, and when so taken, the money raised therein for schools shall be upon the basis of such census and not upon the census of the state. R. S. c. 15, § 92; 61 Me. 449.

If any tax assessed on real estate, or on equitable interests assessed under section three of chapter nine, remains unpaid on the first Monday in February next after said tax was assessed, the collector shall sell at public auction so much of such real estate or interest as is necessary for the payment of said tax, interest and all the charges, at nine o'clock in the forenoon of said first Monday in February, at the office of collector of taxes, in cities, and at the place where the last preceding annual town meeting was held, in towns. In the case of the real estate of resident owners, the collector may give notice thereof and of his intention to sell so much of said real estate or interest as is necessary for the payment of said tax and all charges, by posting notices thereof in the same manner and at the same places that warrants for town meetings are therein required to be posted, six weeks before such first Monday in February, designating the name of the owner if known, the right, lot and range, the number of acres as nearly as may be, the amount of tax due, and

such other short description as is necessary to render its identification certain and plain. And in the case of taxes assessed on the real estate of non-resident owners, he shall cause said notices to be published in some newspaper, if any, published in the county where said real estate lies, three weeks successively; such publication to begin at least six weeks before said first Monday in February; if no newspaper is published in said county, said notices shall be published in like manner, in the state paper; he shall, in the advertisements so published, state the name of the town, and if within three years it has been changed for the whole or a part of the territory, both the present and former name shall be stated; and that, if the taxes, interest and charges are not paid on or before such first Monday in February, so much of the estate as is sufficient to pay the amount due therefor with interest and charges, will be sold without further notice, at public auction, on said first Monday in February, at nine o'clock in the forenoon, at the office of the collector of taxes, in cities, and at the place where the last preceding annual town meeting was held, in towns. The date of the commitment shall be stated in the advertisement. In all cases, said collector shall lodge with the town clerk a copy of each such notice, with his certificate thereon that he has given notice of the intended sale as required by law. Such copy and certificate shall be recorded by said clerk and the record so made shall be open to the inspection of all persons interested. The clerk shall furnish to any person desiring it an attested copy of such record, on receiving payment or tender of payment of a reasonable sum therefor; but notices of sales of real estate within any village corporation for unpaid taxes of said corporation may be given by notices thereof, posted in the same manner, and at the same places as warrants for corporation meetings, and by publication, as aforesaid. No irregularity, informality or omission in giving the notices required by this section, or in lodging copy of any of the same with the town clerk, as herein required, shall render such sale invalid, but such sale shall be deemed to be legal and valid, if made at the time and place herein provided, and in other respects according to law, except as to the matter of notice. For any irregularity, informality or omission in giving notice as required by this section, and in lodging copy of the same with the town clerk, the collector shall be liable to any person injured thereby. R. S. c. 10, § 73; 30 Me. 326; 32 Me. 69; 35 Me. 554; 58 Me. 532, 533; 73 Me. 382; 84 Me. 190, 377; 89 Me. 337; 95 Me. 124; 1 Me. 307; 12 Me. 378; 26

Me. 231; 30 Me. 229; 32 Me. 69; 63 Me. 381; 70 Me. 279; 74 Me. 284.

In the trial of any action at law or in equity, involving the validity of any sale of real estate for non-payment of taxes, it shall be sufficient for the party claiming under it, in the first instance, to produce in evidence the collector's or treasurer's deed, duly executed and recorded, which shall be prima facie evidence of his title, and if the other party claims and offers evidence to show that such sale was invalid and ineffectual to convey the title, the party claiming under it shall have judgment in his favor so far as relates to said tax title, if he then produces the assessment, signed by the assessors, and their warrant to the collector, and proves that such collector or treasurer complied with the requirements of law in selling such real estate; and in all such actions involving the validity of sales made after April twenty-six, eighteen hundred and ninety-five, the collector's return to the town clerk, the town clerk's record, or if lost or destroyed, said clerk's attested copy of such record, as provided in section eighty, shall be prima facie evidence of all facts therein set forth. R. S. c. 10, § 87; 27 Me. 293; 33 Me. 82; 51 Me. 600; 57 Me. 517; 58 Me. 392, 396; 59 Me. 346; 61 Me. 208, 433; 63 Me. 311, 381; 64 Me. 452; 68 Me. 357, 395; 69 Me. 520, 521; 70 Me. 278; 71 Me. 237; 72 Me. 504; 73 Me. 383, 407; 74 Me. 25, 51; 84 Me. 379; 85 Me. 321; 89 Me. 337; 90 Me. 104.

The notice for posting, or the advertisement, as the case may be, of the collector shall be in substance as follows:

Unpaid taxes on lands situated in the town of —, in the county of —, for the year —. [N. B.] The name of the town was formerly —, [to be stated in the case of change of name, as mentioned in the preceding section.] The following list of taxes on real estate of resident [or non-resident, as the case may be] owners in the town of —, for the year —, committed to me for collection for said town, on the — day of —, remain unpaid; and notice is hereby given that if said taxes, interest and charges are not previously paid, so much of the real estate taxed as is sufficient to pay the amount due therefor, including interest and charges, will be sold at public auction at —, in said town, on the first Monday of December, 19—, at nine o'clock A. M. [N. B. Here follows the list, a short description of each parcel taken from the inventory to be inserted in an additional column.]

C. D., Collector of Taxes of the Town of —.

R. S. c. 10, § 74.

After the land is so advertised, and at least ten days before the day of sale, the collector shall notify the owner, if resident, or the occupant thereof, if any, of the time and place of sale by delivering to him in person, or leaving at his last and usual place of abode, a written notice signed by him, stating the time and place of sale, and the amount of taxes due. In case of non-resident owners of real estate, such notice shall be sent by mail to the last and usual address, if known to the collector, at least ten days before the day of sale. If such tax is paid before the time of sale, the amount to be paid for such advertisement and notice shall not exceed one dollar, in addition to the sum paid the printer, if any. R. S. c. 10, § 75; 73 Me. 382; 84 Me. 190.

When no person appears to discharge the taxes duly assessed on any such real estate of resident or non-resident owners, with costs of advertising, on or before the time of sale, the collector shall proceed to sell at public auction, to the highest bidder, so much of such real estate or interest as is necessary to pay the tax due, with three dollars for advertising and selling it, the sum paid to the printer, twenty-five cents for each copy required to be lodged with the town clerk, twenty-five cents for the return required to be made to the town clerk, fifty cents for the town clerk for recording the same, and sixty-seven cents for the deed thereof and certificate of acknowledgment. If the bidding is for less than the whole, it shall be for a fractional part of the estate, and the bidder who will pay the sum due for the least fractional part shall be the purchaser. If more than one right, lot or parcel of land is so advertised and sold, said charge of three dollars, the twenty-five cents for each copy lodged with the town clerk, the twenty-five cents for the return made to the town clerk, and the fifty cents for the town clerk for recording the same, shall be divided equally among the several rights, lots or parcels advertised and sold at any one time; and in addition, the sum paid to the printer shall be divided equally among the non-resident rights, lots or parcels so advertised and sold; and the collector shall receive in addition, fifty cents on each parcel of real estate so advertised and sold, when more than one parcel is advertised and sold. The collector may, if necessary to complete the sales, adjourn the auction from day to day. R. S. c. 10, § 76; 19 Me. 100, 369; 25 Me. 362; 27 Me. 356; 30 Me. 325; 32 Me. 69, 309; 34 Me. 268; 36 Me. 178, 435; 40 Me. 161; 43 Me. 311; 48 Me. 377; 58 Me. 533; 61 Me. 209; 68 Me. 395; 71 Me. 236; 74 Me. 222; 84 Me. 190; 97 Me. 447.

If the purchaser of land sold for taxes under the preceding section fails to pay the collector within twenty days after the sale the amount bid by him, the sale shall be void, and the city or town in which such sale was made shall be deemed to be the purchaser of the land so sold, the same as if purchased by some one in behalf of the city or town under section eighty-five of said chapter ten of the revised statutes. P. L. 1905 c. 27, § 1.

If a city or town becomes a purchaser under the preceding section, the deed to it shall set forth the fact that a sale was duly made, the amount bid for the land included in said deed and that the purchaser failed to pay the amount bid within twenty days after the sale; and the said deed shall confer upon said city or town the same rights and duties as if it had been the purchaser under section eighty-five of said chapter ten of the revised statutes. P. L. 1905 c. 27, § 2.

When real estate is so sold for taxes, the collector shall, within thirty days after the day of sale, lodge with the treasurer of his town a certificate under oath designating the quantity of land sold, the names of the owners of each parcel, and the names of the purchasers; what part of the amount of each was tax, and what was cost and charges; also a deed of each parcel sold, running to the purchasers. The treasurer shall not deliver the deeds to the grantees, but put them on file in his office, to be delivered at the expiration of two years from the day of sale, in the case of lands of resident owners, and one year from the day of sale in the case of lands of non-resident owners, if the owner does not within such time redeem his estate from the sale, by payment of the taxes, and all charges, and interest on the whole at the rate of ten per cent from the day of sale to the time of redemption, and costs as above provided, with sixty-seven cents for the deed and certificate of acknowledgment and all sums paid for internal revenue stamps affixed to such deed. If the deed of land of a non-resident owner is recorded within thirteen months after the day of sale, no intervening attachment or conveyance shall affect the title. If so redeemed, the treasurer shall give the owner a certificate thereof, cancel the deed, and pay to the grantee, on demand, the amount so received for him. If not so paid, he shall deliver to the grantee his deed, on payment of the fees, as aforesaid, for the deed and acknowledgment, and thirty cents more for receiving and paying out the proceeds of the sale. For the fidelity of the treasurer in discharging the duties herein

required, the town is responsible, and has a remedy on his bond in case of default. R. S. c. 10, § 77; 84 Me. 190; 96 Me. 500.

All sums paid by any collector of taxes, or treasurer, for internal revenue stamps to be affixed to any deed of real estate, or interest therein, sold for non-payment of a tax, shall be deemed a part of the costs and charges for making such sale. R. S. c. 10, § 78.

The person interested in the estate, by purchase at the sale, may pay any tax assessed thereon, before or after that so advertised, and for which the estate remains liable, and on filing with the treasurer the receipt of the officer to whom it was paid, the amount so paid shall be added to that for which the estate was liable, and shall be paid by the owner redeeming the estate, with interest at the same rate as on the other sums. After the deed of land of a non-resident owner is so delivered, the owner has six months within which to redeem his estate, by paying to the purchaser the sum by him so paid, with interest at the rate of twenty per cent a year. R. S. c. 10, § 79.

The collector making any sale of real estate for non-payment of taxes, shall, within thirty days after such sale make a return, with a particular statement of his doings in making such sale, to the clerk of his town; who shall record it in the town records; and said return, or if lost or destroyed, an attested copy of the record thereof, shall be evidence of the facts therein set forth in all cases where such collector is not personally interested. The collector's return to the town clerk shall be in substance as follows:

Pursuant to law, I caused the taxes assessed on the real estate of non-resident owners described herein, situated in the town of — for the year —, to be advertised according to law by advertising in the — three weeks successively, the first publication being on the — day of —, and at least six weeks before the day of sale; and caused the taxes assessed on the real estate of resident owners described herein, situated in the town of — for the year —, to be advertised according to law by posting notice as required by law, at the following places, six weeks before the day of sale, being public and conspicuous places in said town. I also, at least ten days before the day of sale, gave to each resident owner of said lands, or the occupant thereof, if any, in hand, or left at his last and usual place of abode, and sent by mail to the last and usual address of each non-resident owner of said lands, whose address was known to me, written notice of the time and place of said sale, in the manner provided by law; and afterwards on the first Monday of December, 19—, at nine o'clock, A. M., being the time and place of sale, I proceeded to sell, according to the tenor of the adver-

tisement, the estates upon which the taxes so assessed remained unpaid; and in the schedules following is set forth each parcel of the estate so offered for sale, the amount of taxes, and the name of the purchaser; and I have made and executed deeds of the several parcels to the several persons entitled thereto, and placed them on file in the town treasurer's office, to be disposed of as the law requires.

SCHEDULE No. 1.

NON-RESIDENT OWNERS.

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
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SCHEDULE No. 2.

RESIDENT OWNERS.

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
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In witness of all which I have hereunto subscribed my name, this — day of —, 19—.

C. D., *Collector of Taxes of the Town of* —.

R. S. c. 10, § 80; 84 Me. 190; 95 Me. 124.

Any person to whom the right by law belongs, may, at any time within two years from the day of sale, redeem any real estate or interest of resident proprietors sold for taxes, on paying into the town treasury for the purchaser, the full amount so certified to be due, both taxes and cost, including the sum allowed for the deeds and stamps, with interest on the whole at the rate of twenty per cent a year from the date of the sale, which shall be received and held by said treasurer as the property of the purchaser aforesaid; and the treasurer shall pay to said purchaser, his heirs or assigns, on demand; and if not paid when demanded, the purchaser may recover it in any court of competent jurisdiction, with costs and interest at the rate of twenty per cent, after such demand. The sureties of the treasurer shall pay the same on failure of said treasurer. And in default of payment by either, the town or plantation shall pay the same with costs and interest as aforesaid. R. S. c. 10, § 81; 84 Me. 190.

If no person having legal authority so to do redeems the same within the time aforesaid by paying the full amount

required by this chapter, said treasurer shall deliver to the purchaser the deeds so lodged with him by the collector; and if he willfully refuses to deliver such deed to such purchaser, on demand, after said two years and forfeiture of the land as aforesaid, he forfeits to said purchaser the full value of the property so to be conveyed, to be recovered in an action of debt, with costs and interest as in other cases; the sureties of said treasurer shall make good the payment here required, in default of payment by the principal; and on the failure of both, the town is liable. R. S. c. 10, § 82.

Any non-resident owner of real estate sold under section seventy-six, having paid the taxes, costs, charges and interest as aforesaid, may, at any time within one year after making such payment, commence a suit against the town to recover the amount paid, and if on trial it appears that the money raised was for an unlawful purpose, he shall have judgment for the amount so paid. If not commenced within the year, the claim shall be forever barred. The suit may be in the supreme judicial or superior court, and the plaintiff recovering judgment therein shall have full costs, although the amount of damages is less than twenty dollars. R. S. c. 10, § 83; 58 Me. 391, 395; 68 Me. 357.

The treasurer's receipt or certificate of payment of a sufficient sum to redeem any lands taxed as aforesaid, shall be legal evidence of such payment and redemption. R. S. c. 10, § 84.

In all cases where real estate has been sold for state, county or town taxes, the owner may, within the time allowed by law, pay the sums necessary to redeem the same, into the treasury of the state, county or town to which the tax is to be paid, and such payment seasonably made shall redeem the estate. The treasurer shall pay the amount so received by him to the person entitled thereto according to the records and documents in his office. R. S. c. 10, § 86.

The municipal officers may employ one of their own number, or some other person, to attend the sale for taxes of any real estate, in which their town is interested, and bid therefor a sum sufficient to pay the amount due and charges, in behalf of the town, and the deed shall be made to it. R. S. c. 10, § 85; 61 Me. 551; 95 Me. 166.

All state taxes hereafter assessed shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are

paid. Said treasurers shall pay such taxes to the treasurer of state. R. S. c. 10, § 3.

The collector of taxes of any town or the treasurer of any town who is also a collector, may issue his warrant to the sheriff of any county, or his deputy or to a constable of his town, directing him to distrain the person or property of any person not paying his taxes within three months after the date of the original commitment which warrant shall be of the same tenor as that prescribed to be issued by municipal officers or assessors to collectors with the appropriate changes returnable to the collector or treasurer issuing the same in thirty, sixty or ninety days. R. S. c. 10, § 67; 96 Me. 269.

When such collector or treasurer thinks that there is danger of losing by delay a tax assessed on any individual, he may distrain his person or property before the expiration of the time named in the preceding section. R. S. c. 10, § 68.

Before such officer serves any such warrant, he shall deliver to the delinquent, or leave at his last and usual place of abode, a summons from said collector or treasurer, stating the amount of tax due, and that it must be paid within ten days from the time of leaving such summons, with twenty cents for the officer for leaving the same; and if not so paid, the officer shall serve such warrant the same as collectors of taxes may do, and shall receive the same fees as for levying executions in personal actions. R. S. c. 10, § 69; 96 Me. 270.

Form of Summons to Pay Personal and Poll Taxes.

STATE OF MAINE.

County of ———, ss.

To ———, of the town of ———, in said county of ———:

The personal and poll tax assessed against you in said town of ——— for the year 19—, and committed to me for collection, and now due, and in paying which you are delinquent, is ——— dollars and ——— cents, which must be paid within ten days from the time of service of this summons, with twenty cents for the officer leaving the same.

—————, { *Collector [or Treasurer and Collector]*
 { *of the Town of ——— for the year 19—.*

Date, ———, 19—.

OFFICER'S NOTICE.

To ———, above named:

The collector [*or treasurer acting as collector*] of taxes for the town of ——— has issued his warrant to me for collection of your said tax; and if the same is not paid on or before the ——— day of ———, 19—, in accordance with

the foregoing summons, I shall proceed to enforce payment thereof according to law.

Date, —, 19—.

——, } *Constable of the Town of —.*
 [Or *Sheriff or Deputy Sheriff*
of the County of —.]

Amount of tax, \$——

Interest and cost, ——

Total, \$——

Form of Collector's Warrant to Sheriff or Constable to Collect Delinquent Taxes.

STATE OF MAINE.

[L. S.]

County of —, ss.

To the sheriff of said county of — or any of his deputies, or to any constable of the town of —, in said county,

GREETING.

In the name of the State of Maine, you are hereby required to collect of —, of said —, the sum of — dollars and — cents, being the amount of state, county and town taxes assessed against said — in said town of — for the year 19—, in the lists committed to me for collection by the assessors of said —. The time fixed by vote of said town for payment of said taxes, to wit, — having expired and the said — being delinquent in paying his said taxes, if he refuses or neglects to pay the sum which he is assessed in said list, you shall deliver to him in person or leave at his last and usual place of abode a summons under my hand as collector of said town of —, stating the amount of tax due and that it must be paid within ten days from the date of leaving such summons, and if he refuses or neglects for the said period of ten days to pay the same you shall then distrain him by any of his goods or chattels not exempt to the value of said tax thereof; and keep the distress so taken for four days at the cost and charge of the owner; and if he does not pay his tax so assessed within said four days, then you shall sell at public vendue such distress for payment thereof with charges; first giving at least forty-eight hours' notice before the expiration of said four days of such sale by posting advertisements in some public place in the town; and the overplus arising by such sale, if any, beyond the tax and expense of sale (including the necessary charges of taking and keeping the distress, and likewise after satisfying yourself for your own fees as allowed by law for levying executions in personal actions), you shall immediately restore to the former owner, with a written account of the sale and charges; and for want for twelve days after demand of goods and chattels, whereon to make distress, except property exempt from attachment for debt, you shall take the body of such person so refusing or neglecting, and him commit to the jail of the county of —, there to remain until he pays said tax or is discharged by law.

And have you this warrant at my office at the expiration of — [thirty, sixty, or ninety] days from the date hereof, with an account of your doings, and return of collections indorsed thereon.

Given under my hand and seal this — day of —, 19—.

—, } Collector [Treasurer and Collector]
of Taxes of the Town of —.

RETURN ON WARRANT OF DISTRESS AND SALE.

STATE OF MAINE.

County of —, ss.

—, 19—.

By virtue of the within warrant, on the — day of —, 19—, I delivered to the said — in hand [left at the last and usual place of abode of the said —] a summons under the hand of —, collector of the said town of —, stating the amount of tax due and that it must be paid within ten days from the date of leaving such summons; and whereas the said — neglected and refused for the said period of ten days to pay the same,* I took — as the property of the within named — and kept it for the space of four days, and on the — day of said —, being at least forty-eight hours before the expiration of said four days, I posted notice at —, in —, being a public place therein, that — [state kind of property] of or belonging to —, taken on the — day of —, 19—, as a distress for tax duly assessed against him for the year 19—, and in bills duly committed to the collector of said — for collection, which tax the said — refused to pay, would be openly sold by me for the payment of said tax and charges at public vendue, at —, in said —, on the — day of —, 19—, at — o'clock in the — noon, if said tax with legal fees and expenses was not paid before that time; and on the said — day of —, at said hour, according to said notice, I openly sold said — at public vendue to —, he being the highest bidder, for — dollars and — cents, from which sum I deducted — dollars and — cents, being the amount of said tax, which I discharge in said bills, and — dollars and — cents for charges and expenses of the distraint and sale, and afterward on the same day at said — I restored [or offered to restore and tendered] the sum of — dollars and — cents, being the balance arising from said sale after deducting said tax and expense of sale, with a written account of said sale and charges, to the said —, who then and there received [or declined to receive] said balance.

—, } Constable of —. [Or Sheriff
or Deputy Sheriff of the
County of —.]

Service of warrant, ...50

Copy of warrant, ...33

Travel, ...

Expenses, ...

Dollarage, ...

Amount realized from sale, \$—

Amount of tax and expense, \$—

Amount refunded to owner, \$—

Total expenses, . . .

In case distraint is made of the body strike out following the star () and use form on following page.

RETURN OF ARREST AND COMMITTAL OF DELINQUENT TAX-PAYER.

For want for twelve days after demand of goods and chattels, whereon to make distress, except property exempt from attachment for debt, on the — day of —, 19—, I arrested the said — and committed him to the jail at —, in the county of —, and gave the jailer an attested copy of the within warrant with a certificate under my hand of the sum which the said — was to pay as his tax and the costs of arresting and committing him, and that for want of goods and chattels whereon to make distress, I arrested him.

Fees :—Arrest, ...50
 Copy of warrant, .33
 Travel, . . .
 Conveyance, . . .

—, } Constable of —. [Or Sheriff
 } or Deputy Sheriff of the
 County of —.]

Form of Collector's Advertisement of Sale of Lands of Non- Resident Owners.

STATE OF MAINE.

Unpaid taxes on lands situated in the town of —, in the county of —, for the year 19—. [N. B.] The name of said town was formerly — [this blank space to be filled in case the name of the town for the whole or any part of its territory has been changed within three years].

The following list of taxes on real estate of non-resident owners in the town of — aforesaid, for the year 19—, committed to me for collection for said town on the — day of —, 19—, remain unpaid; and notice is hereby given that if said taxes, with interest and charges, are not previously paid, so much of the real estate taxed as is sufficient to pay the amount due therefor, including interest and charges, will be sold without further notice at public auction at — [in cities sale must be at the collector's office, in towns at the place where the last preceding town meeting was held], in said town, on the first Monday in February, 19—, at nine o'clock A. M.

Name of owner.	Description of property.	Amount of tax due, including interest and charges.
----------------	--------------------------	--

—, 19—.

—, Collector of Taxes of the Town of —.

RETURN TO TOWN CLERK.

I hereby certify that the within and foregoing is a true copy of the advertisement of the aforesaid intended sale, and that I have given notice of said

intended sale as required by law, by causing said advertisement to be published in —, a newspaper published in said county of —, three weeks successively, the first publication thereof being at least six weeks before the first Monday in February, 19—, to wit, on the — day of —, 19—. I also certify that after said lands were so advertised, and at least ten days before the day of sale, to wit, on the — day of —, 19—, I sent by mail to the last and usual address of said — respectively, being all the non-resident owners of said lands whose said addresses are known to me, a written notice signed by me, stating the time and place of sale, and amount of taxes due.

—, *Collector of Taxes of the Town of* —.

Received and recorded —, 19—.

—, *Town Clerk.*

MEMO.—This return should be made and lodged with the town clerk immediately after service and mailing of notice and before day of sale.

Form of Collector's Notice of Sale of Lands of Resident Owners.

STATE OF MAINE.

Unpaid taxes on lands situated in the town of —, in the county of —, for the year 19—.

The following list of taxes on real estate of resident owners in the Town of — aforesaid, for the year 19—, committed to me for collection for said town on the — day of —, 19—, remain unpaid; and notice is hereby given that if said taxes, with interest and charges, are not previously paid, so much of the real estate taxed as is sufficient and necessary to pay the amount due therefor, including interest and charges, will be sold at public auction at — [*in cities sale must be at the collector's office, in towns at the place where the last preceding town meeting was held*], in said town, on the first Monday in February, 19—, at nine o'clock A. M.

Name of owner.	Description of property.	Amount of tax due, including interest and charges.
----------------	--------------------------	--

—, 19—.

—, *Collector of Taxes of the Town of* —.

RETURN TO TOWN CLERK.

I hereby certify that the within and foregoing is a true copy of the notice of the aforesaid intended sale, and that I have given notice of said intended sale as required by law, by posting the same in the same manner and at the same places that warrants for town meetings are therein required to be posted, to wit, at —, at —, at —, six weeks before the first Monday in February, 19—, to wit, on the — day of —, 19—. I also certify that after said notice of the intended sale was so posted and at least ten days before the day of sale, to wit, on the — day of —, 19—, I delivered to

said —, residents of said — respectively, in person, and to —, occupants of said lands, the taxes on which were assessed to —, residents of said — respectively, in person, and left at the last and usual place of abode of said —, residents of said —, and of —, occupants of said lands, the taxes on which were assessed to —, residents of said — respectively, a written notice, signed by me, stating the time and place of sale, and amount of taxes due.

—, *Collector of Taxes of the Town of —.*

Received and recorded —, 19—.

—, *Town Clerk.*

MEMO.—This return should be made and lodged with the town clerk immediately after service and mailing of notice and before day of sale.

Form of Collector's Notice to Owner or Occupant.

STATE OF MAINE.

—, 19—.

To —:

You are hereby notified that the taxes for the year 19—, amounting to \$—, on the real estate assessed to —, situated in the town of —, described as follows: [*here insert description of property*] committed to me for collection for said town, remain unpaid, and notice is hereby given that if said taxes, interest and charges are not previously paid, so much of the real estate taxed as is sufficient and necessary to pay the amount due therefor, including interest and charges, will be sold, without further notice, at public auction at — in said town, on the first Monday of February, 19—, at nine o'clock A. M.

—, *Collector of Taxes of the Town of —.*

Tax, \$—
Interest, —
Charges, —

Form of Collector's Certificate to Town Treasurer of Tax Sales.

STATE OF MAINE.

To the treasurer of the town of —, in the county of — and State of Maine:

I, —, collector of taxes for said town for the year 19—, certify on oath that, after posting and publishing notices thereof according to law, and giving notice to resident owners or occupants and to non-residents according to law, I did on the first Monday of February, 19—, at nine o'clock in the forenoon, sell at public auction at —, in said town of —, to the following named purchasers, respectively, the several following named quantities of land owned by the following named owners of each parcel, for the tax of 19—, and interest, cost and charges against said several owners and their respective parcels of land; and I herewith lodge with you deeds of each parcel of land sold, running to the several purchasers thereof. Said sales,

names of owners, names of purchasers, and amount of tax and interest, and of cost and charges, being as follows, to wit:

Names of purchasers.	Quantity and description of land sold.	Names of owners.	Amount of tax, including interest.	Amount of costs and charges.	Total amount realized.
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———, *Collector of Taxes for said Town of* ———.

STATE OF MAINE.

——— *County, ss.*

———, 19—.

Then personally appeared the above named ———, collector of the town of ———, and made oath to the foregoing certificate by him subscribed.

Before me,

———, *Justice of the Peace.*

N. B.—The statute requires this certificate and the deeds to be lodged with the town treasurer within thirty days after the day of sale.

Form of Collector's Return to Town Clerk of Tax Sales.

STATE OF MAINE.

To ———, clerk of the town of ———, in the county of ——— and State of Maine:

Pursuant to law I caused the taxes assessed on the real estate of non-resident owners described herein, situated in the town of ———, for the year 19—, to be advertised according to law by advertising in the ———, a newspaper published in said county, three weeks successively, the first publication being on the ——— day of ———, 19—, and at least six weeks before the day of sale; and caused the taxes assessed on the real estate of resident owners, described herein, situated in the town of ———, for the year 19—, to be advertised according to law by posting notices as required by law at the following places, at ———, at ———, at ———, being public and conspicuous places in said town, at least six weeks before the day of sale, to wit, on the ——— day of ———, 19—; I also, at least ten days before the day of sale, to wit, on the ——— day of ———, 19—, gave to each resident owner of said lands, or the occupant thereof, if any, in hand, or left at his last and usual place of abode, and sent by mail to the last and usual address of each non-resident owner of said land, whose address was known to me, written notice of the time and place of said sale, and the amount of taxes due, in the manner provided by law.

And afterwards on the first Monday of February, 19—, at ———, in said ———, at nine o'clock in the forenoon, being the time and place of sale, I proceeded to sell according to the tenor of the advertisement the estates upon which the taxes so assessed remained unpaid to the persons and for the sums set forth in the schedules forming a part of this return, the same

having been struck off to the said persons, they being the highest bidders therefor, and it being necessary to sell said amount of real estate so taxed and advertised as aforesaid and no person offering to pay said taxes and interest and charges for a smaller fractional part of said land, at a public auction legally notified as hereinbefore set forth and held at the townhouse — in said — (being the place where the last preceding annual town meeting was held), on the first Monday in February, A. D. 19—, at nine o'clock A. M., when and where I, the said collector, exposed said property for sale and offered to sell such fractional parts thereof as were necessary to pay such taxes and charges and could not obtain bids for any smaller fractional parts thereof than those set forth in the said schedules; and I have made and executed deeds of the several parcels sold to the several persons entitled thereto, and placed them on file in the town treasurer's office, to be disposed of as the law requires; and lodged my certificate of said tax sales with the town treasurer within thirty days after the day of sale.

SCHEDULE No. 1.

NON-RESIDENT OWNERS.

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
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In witness of all of which I have hereunto subscribed my name this — day of —, 19—.

—, *Collector of Taxes of the Town of* —.

SCHEDULE No. 2.

RESIDENT OWNERS.

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
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In witness of all of which I have hereunto subscribed my name this — day of —, 19—.

—, *Collector of Taxes of the Town of* —.

Form of Collector's Tax Deed—Non-Resident Owner.

STATE OF MAINE.

Know all men by these presents, that whereas the assessors of the town of —, county of — and State of Maine, for the year 19—, legally chosen and sworn, have agreeably to law assessed the real estate hereinafter described in the sum of — dollars and — cents, taxed to — as a non-resident owner in said —, which tax they did in their list of assessments

on the — day of —, A. D. 19—, by their warrant commit to me, —, collector of said town for said year, legally chosen and sworn, to collect; and whereas no person has appeared to discharge said tax, although I have advertised the same by causing notices designating the name of the owner, if known, the right, lot and range, the number of acres as nearly as may be, the amount of tax due, and such other short description as is necessary to render its identification certain and plain, and stating the date of commitment, to be published in the —, a newspaper published in said county of —, three weeks successively, the first publication thereof being on the — day of —, 19—, and at least six weeks before the first Monday in February, A. D. 19—, that if said taxes, interest and charges thereon were not previously paid, so much of said real estate taxed as was sufficient to pay the amount due therefor, including interest and charges, would be sold at public auction at the townhouse — in said — (being the place where the last preceding annual town meeting was held), on said first Monday of February, A. D. 19—, at nine o'clock A. M.; and whereas I, the said collector, did on the — day of —, 19—, lodge with the town clerk of said — a copy of each of said notices with my certificate thereon by me signed that I had given notice of the intended sale by publishing the same as aforesaid and as required by law; and whereas* after said land was so advertised as aforesaid, and on the — day of —, A. D. 19—, being at least ten days before the day of said sale, I, the said collector, sent by mail to the last and usual address of —, of —, the owner of said land, a written notice signed by me, stating the time and place of said sale and the amount of taxes due;

Now therefore, I, —, as collector of taxes of said —, as aforesaid, in consideration of the sum of — dollars and — cents, being the amount of said taxes remaining unpaid and interest and charges thereon, to me paid by —, of —, in the county of — and State of Maine, have granted, bargained, and sold, and by these presents do grant, bargain, sell and convey unto the said —, his heirs and assigns forever, the following described real estate situated in said town of —, to wit [*here insert portion sold with description as inventoried*], the same having been struck off to the said —, he being the highest bidder therefor, and it being necessary to sell said amount of said real estate so taxed and advertised as aforesaid, and no person offering to pay said taxes and interest and charges for a smaller fractional part of said land, at a public auction legally notified as hereinbefore set forth, and held at the townhouse — in said — (being the place where the last preceding annual town meeting was held), on the first Monday of February, A. D. 19—, at nine o'clock A. M., when and where I, the said collector, exposed said property for sale, and offered to sell such fractional part thereof as was necessary to pay said taxes and charges, and could not obtain a bid for any smaller fractional part thereof than that above named and hereby conveyed.

To have and to hold the same to the said —, his heirs and assigns, for his and their proper use and behoof forever; subject, however, to the right of redemption which the owner thereof or any other person has or may have at any time within the time specified by law; and I do covenant with the said —, his heirs and assigns, that I gave notice of the intended sale of said real estate according to law, that said sale was within two years from and after the date of the original commitment of said taxes to me by warrant for collection thereof, and that in all respects I have in the premises observed the directions of the law, whereby I have good right and full power in my said capacity to sell and convey the said premises to the said — to hold as aforesaid.

In witness whereof, I do hereunto set my hand and seal in my said capacity as collector of said —, duly authorized by law, this — day of —, A. D. one thousand nine hundred and —.

Signed, sealed and delivered

in presence of

—

—, *Collector*. [L. s.]

In case notice could not be mailed, erase all following the star () and insert "the address of the said — was unknown to me."

STATE OF MAINE.

—, ss.

—, 19—.

Then personally appeared the above named —, collector, and acknowledged the above instrument to be his free act and deed in his said capacity.

Before me,

—, *Justice of the Peace*.

Form of Collector's Tax Deed—Resident Owner.

STATE OF MAINE.

Know all men by these presents, that whereas the assessors of the town of —, county of — and State of Maine, for the year 19—, legally chosen and sworn, have agreeably to law assessed the real estate hereinafter described in the sum of — dollars and — cents, taxed to — as a resident owner of real estate in said —, which tax they did in their list of assessments on the — day of —, A. D. 19—, by their warrant commit to me, —, collector of said town for said year, legally chosen and sworn, to collect; and whereas no person has appeared to discharge said tax, although I have advertised the same by posting notices designating the name of the owner, if known, the right, lot and range, the number of acres as nearly as may be, the amount of tax due, and such other short description as is necessary to render its identification certain and plain, and stating the date of commitment, at —, and —, and —, three public and conspicuous places in said town (in the same manner and places that warrants for town meetings are by law required to be posted therein), on the — day of —, 19—, being six weeks before the first Monday in February, A. D. 19—, that if said

taxes, interest and charges thereon were not previously paid, so much of said real estate taxed as was sufficient and necessary to pay the amount due therefor, including interest and charges, would be sold at public auction at the townhouse — in said — (being the place where the last preceding annual town meeting was held), on said first Monday of February, A. D. 19—, at nine o'clock A. M.; and whereas I, the said collector, did on the — day of —, 19—, lodge with the town clerk of said — a copy of each of said notices with my certificate thereon by me signed that I had given notice of the intended sale by posting the same as aforesaid and as required by law; and whereas after said land was so advertised as aforesaid, and on the — day of —, A. D. 19—, being at least ten days before the day of said sale, I, the said collector, notified —, the owner [*or occupant*] of said land, by delivering to him in person [*or by leaving at his last and usual place of abode*], a written notice signed by me stating the time and place of said sale and the amount of taxes due;

Now therefore, I, —, as collector of taxes of said —, as aforesaid, in consideration of the sum of — dollars and — cents, being the amount of said taxes remaining unpaid and interest and charges thereon, to me paid by —, of —, in the county of — and State of Maine, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey unto the said —, his heirs and assigns forever, the following described real estate situated in said town of —, to wit [*here insert portion sold with description as inventoried*], the same having been struck off to the said —, he being the highest bidder therefor, and it being necessary to sell said amount of said real estate so taxed and advertised as aforesaid, and no person offering to pay said taxes and interest and charges for a smaller fractional part of said land, at a public auction legally notified as hereinbefore set forth, and held at the townhouse — in said — (being the place where the last preceding annual town meeting was held), on the first Monday of February, A. D. 19—, at nine o'clock A. M., when and where I, the said collector, exposed said property for sale, and offered to sell such fractional part thereof as was necessary to pay said taxes and charges, and could not obtain a bid for any smaller fractional part thereof than that above named and hereby conveyed.

To have and to hold the same to the said —, his heirs and assigns, for his and their proper use and behoof forever; subject, however, to the right of redemption which the owner thereof or any other person has or may have at any time within the time specified by law; and I do covenant with the said —, his heirs and assigns, that I gave notice of the intended sale of said real estate according to law, that said sale was within two years from and after the date of the original commitment of said taxes to me by warrant for collection thereof, and that in all respects I have in the premises observed the directions of the law, whereby I have good right and full power in my said capacity to sell and convey the said premises to the said — to hold as aforesaid.

In witness whereof, I do hereunto set my hand and seal in my said capacity as collector of said —, duly authorized by law, this — day of —, A. D. one thousand nine hundred and —.

Signed, sealed and delivered
in presence of

—

—, *Collector.* [L. s.]

STATE OF MAINE.

—, ss.

—, 19—.

Then personally appeared the above named —, collector, and acknowledged the above instrument to be his free act and deed in his said capacity.

Before me,

—, *Justice of the Peace.*

Form of Collector's Warrant.

STATE OF MAINE.

County of —, ss.

To —, constable or collector of taxes of the town of —, within the county of —,

GREETING.

In the name of the State of Maine, you are hereby required to levy and collect of each of the several persons named in the list herewith committed unto you, his respective proportion therein set down, of the sum total of such list, it being — dollars and — cents, said town's proportion of the state tax, for the year 19—, and to transmit and pay the same to —, the treasurer of your town, or to his successor in office, and to complete and make an account of your collections of the whole sum, on or before the — day of — next. [*The state treasurer's warrant upon the town treasurer will determine the date. R. S. c. 10.*] Also to levy and collect of each of said persons his respective proportion therein set down of the further sum of — dollars and — cents, this town's proportion of a tax or assessment of — dollars and — cents, granted by a resolve of the legislature of said state, passed at the last session, upon an estimate made by the court of county commissioners at their session begun and held at —, in and for said county, on the — day of —, A. D. 19—, of sums necessary for defraying the charges of the county for the year ensuing, and pay the same to —, the treasurer of your town, or his successor in office, on or before the — day of —, A. D. 19—. [*The county treasurer's warrant upon the town treasurer will determine this date. R. S. c. 10.*] Also to levy and collect of each of said persons his respective proportion therein set down of the further sum of — dollars and — cents, voted and raised by said town of —, at the annual town meeting, on the — day of — last past, for the support of schools and of the poor, the maintenance of highways, and other currant expenses, and of the further sums of — dollars and — cents, the overlay authorized by law, and pay the said sums.

amounting in the whole to — dollars and — cents, unto —, treasurer of your town, or to his successor in office, one-half part thereof on or before the — day of — next, and the remainder on or before the — day of — next.

And if any person refuses or neglects to pay the sum which he is assessed in said list, you shall distrain his goods or chattels to the value thereof ; and keep the distress so taken for four days, at the cost and charge of the owner ; and if he does not pay the sum so assessed within said four days, then you shall sell at public vendue such distress for payment thereof with charges ; first giving forty-eight hours' notice thereof by posting advertisements in some public place in the town [*or plantation*] ; and the over-plus arising by such sale, if any, beyond the sum assessed, and the necessary charges of taking and keeping the distress, you shall immediately restore to the owner ; and for want for twelve days after demand of goods and chattels, whereon to make distress, except implements, tools, articles of furniture, and other property exempt from attachment for debt, you shall take the body of such person, so refusing or neglecting, and him commit to the jail of the county, there to remain until he pays the same, or such part thereof as is not abated by the assessors for the time being, or the county commissioners for said county.

In case of the neglect of any person to pay the sum required by said list until after the — day of —, 19—, you will add interest to so much thereof as remains unpaid, at the rate of — per cent from said date to the time of payment, and collect the same with the tax remaining unpaid.

Given under our hands, by virtue of warrants from the state treasurer, aforesaid, and from our county commissioners, and in accordance with a legal vote of the town and the statutes in such case made and provided, this — day of —, A. D. 19—.

_____,
_____,
_____, } Assessors.

To —, collector of taxes of the town of — aforesaid :

Herewith are committed to you true lists of the assessments of the polls and estates of the persons therein named : You are to levy and collect the same, of each one his respective proportion, therein set down, of the sum total of — dollars and — cents (being the amount of the lists contained herein), according to the exigency of any lawful warrant touching the same to you committed.

Given under our hands at —, this — day of —, A. D. 19—.

_____,
_____,
_____, } Assessors.

Form of Tax Bill.*Town of ———, Maine.**M——.***NOTICE TO TAX-PAYERS.**

For all taxes unpaid —, 19—, a summons will be issued. If not paid within ten days after such summons, with 20 cents for said summons, the collector will at once proceed to collect poll and personal taxes according to law, causing additional costs.

Real estate upon which taxes remain unpaid will be advertised in Dec., 19—, and sold in Feb., 19—.

Each partner is liable for the whole tax assessed to the firm.

All buildings are assessed to the owner of the land on which the buildings are located.

Aliens are assessed for a poll tax same as citizens.

An error in the name of the person taxed does not defeat the collection of the tax.

Remittance may be made by mail and a receipt will be returned.

_____,
Collector of Taxes.

Your state, county and town tax for the year 19—, is as follows:

Poll,

\$—

Real Estate,

—

Personal Estate,

—

Total Tax,

\$—

Received Payment, ———, 19—.

———, *Collector.*

Rate of Taxation, \$—— per \$1,000.

CHAPTER XXXIV.

TOWN TREASURER.

Annual town meetings shall be held in March and the voters shall then choose by a major vote a treasurer and collectors of taxes. Treasurers and collectors of towns shall not be selectmen or assessors, until they have completed their duties as treasurers and collectors and had a final settlement with the town. The treasurer and collector of taxes of cities and towns may be one and the same person. R. S. c. 4, § 12.

The town treasurer shall be elected by ballot. R. S. c. 4, § 14.

The treasurer before entering upon the discharge of his official duties, shall give bond to the inhabitants of his town with such sureties and for such sum as shall be designated by the municipal officers, not exceeding, however, twice the amount of the taxes to be collected during the year for which he is treasurer, conditioned for the faithful discharge of all the duties and obligations of his office. If such bond is not furnished and delivered to the municipal officers, within ten days after written demand by the municipal officers on the treasurer therefor, the office of treasurer shall be deemed vacant, and the town or plantation, at any meeting of its inhabitants legally called, may elect a treasurer to fill the vacancy, or the municipal officers may fill the vacancy by written appointment which shall be recorded by the clerk in the town records. The municipal officers shall be the sole judges of the sufficiency of such bond and sureties. Such bond, after its approval and acceptance by the municipal officers, shall be recorded by the clerk, and such record shall be prima facie evidence of the contents of such bond, but a failure to so record shall be no defense in any action upon such bond. The municipal officers may accept any surety company authorized to do business in the state, as surety on such bond, and dispense with any further surety or sureties thereon. Any town or plantation may lawfully vote, at its annual meeting, to raise money to be expended by its treasurer, under the direction of

the municipal officers, for the purpose of purchasing from any surety company authorized to do business as aforesaid, the bond required by this section. R. S. c. 4, § 19.

The law gives a town treasurer the custody of a town's money to keep, and to pay out under proper authority for town purposes, but not to use for himself in any way whatever. His responsibility is not measured or acquitted by his ability to pay over the balance due at the end of his term, upon demand or otherwise, but it depends upon his use or misuse of the money during the term, or later. 101 Me. 160.

The town treasurer is bound to exercise good faith, reasonable skill and diligence in the discharge of his trust, or, in other words, to bring to its discharge that prudence, caution and attention which careful men usually exercise in the management of their own affairs; and he is not responsible for any loss occurring without any fault on his part. 69 Me. 366.

The treasurer keeps and handles the money; and, in doing this, he acts on his own responsibility. 69 Me. 375; 70 Me. 437.

The fact that the treasurer uses a safe placed in the treasurer's office for the deposit of the money and other effects of the town therein, does not protect him in case of loss. 69 Me. 375.

By accepting the office the treasurer takes the risk of safe keeping of the money he has actually received. The loss of the money by theft or otherwise does not excuse him from his obligations. 12 Cushing 112.

The town has no authority to advertise for sealed proposals from banks of deposit as to the terms upon which they will receive and disburse public moneys of the town. Nor is the town treasurer obliged to deposit the funds in the bank designated by vote of the citizens. Interest received on deposits of public money shall be accounted for. It is not the property of the town treasurer. 87 Cal. 604; 18 Wash. 625; 84 Wis. 473; 15 L. R. A. 456.

A town treasurer has no authority to borrow money upon the credit of the town for any purpose. He must be specially authorized by vote before he can bind the town. 91 Me. 368.

Form of Bond.

Know all men by these presents, that we, A. B., of —, in the county of —, as principal, and C. D. and E. F., of said —, as sureties, are held and firmly bound unto the inhabitants of said town of —, in the sum of — dollars; to which payment, well and truly to be made, we bind ourselves,

our heirs and executors, by these presents. Witness our hands and seals, this — day of —, A. D. 19—.

The condition of this obligation is such, that whereas the said A. B., treasurer of said town, has been appointed collector of taxes of said town, for the year 19—; now, if the said A. B. shall well and faithfully discharge all the duties of said office, then this obligation to be void; otherwise, to remain in full force and virtue.

A. B. [Seal.]

C. D. [Seal.]

E. F. [Seal.]

The treasurer of any town or plantation may appoint a citizen thereof as his deputy during his temporary absence or other temporary disability. The appointment shall be in writing and be recorded.

Form of Appointment of Deputy Treasurer.

I, —, hereby appoint — to perform the duties of town treasurer of the town of —, during the treasurer's temporary absence from his office.

R. S. c. 4, § 20.

—, *Treasurer.*

The treasurer and the sureties upon his official bond, are responsible for all acts and omissions of his deputy in such office. R. S. c. 4, § 21.

Every treasurer shall render an account of the finances of his town, and exhibit all books and accounts pertaining to his office, to the municipal officers thereof, or to any committee appointed by it to examine said accounts, when required; and such officers shall examine such treasurer's accounts as often as once in three months. R. S. c. 4, § 22; 60 Me. 475; 70 Me. 439.

The fact that the town treasurer does not render an account of the finances of his town as required by law does not release the sureties on his bond. 60 Me. 475.

An omission on the part of a town treasurer to render the account as prescribed in the foregoing section constitutes a breach of his official bond. 70 Me. 439.

In case of death, resignation, removal or other permanent disability of a treasurer of a town or plantation, the municipal officers may appoint a citizen thereof to be treasurer until his successor is elected and qualified. Such appointment shall be in writing and be recorded.

Form of Appointment of Treasurer to Fill Vacancy.

We, the municipal officers of the town of —, hereby appoint — treasurer of said town until his successor is elected and qualified.

R. S. c. 4, § 23.

Before such appointee enters upon his official duties he shall be sworn, and give bond to the town for the faithful performance thereof in such sum and with such sureties as the municipal officers order. R. S. c. 4, § 24.

Persons charged with the expenditure of the money of a town, shall, on or before the morning of each annual meeting, make a full, detailed written or printed report of all their financial transactions in behalf of the town, during the municipal year immediately preceding, with a full account of the receipts and disbursements during that period, and to whom and for what purpose each item of the same was paid, with a statement in detail of the indebtedness and resources of the town. Such reports, or like reports of town auditors, if printed, shall be distributed to the voters on or before the morning of the annual meeting, or, if not printed, shall be presented and read in open town meeting before the election of selectmen, and, whether written or printed, shall be kept deposited in the office of the selectmen, or if they have no office or usual place of business, with the town clerk, with proper vouchers for the disbursements reported, where such reports and vouchers, and all the books of the town shall be open during the usual hours of business, to the inspection of voters; and if any town officer refuses or neglects to perform any requirement of this section, or refuses to allow any voter to examine such reports, vouchers, and town books, he forfeits fifty dollars for each refusal or neglect, to be recovered by indictment, half to the complainant and half to the county. R. S. c. 4, § 41.

No person shall make a bet or wager upon the result of any election in the state, in money or in any kind of property, real or personal, under penalty of forfeiting the money or property so bet or wagered, to the town in which he resides, or if he does not reside in the state, then to the town in which the bet or wager is made, to be recovered in an action on the case. The mayor of the city, or the treasurer of the town or plantation entitled to such forfeiture shall forthwith proceed to sue for it, as soon as he has proper evidence of such betting or wagering. R. S. c. 6, §§ 97, 98; 69 Me. 121; 70 Me. 496.

It is no part of the duty of the stakeholder to enforce the penalty in favor of the town in which the bet or wager is made. 69 Me. 121; 70 Me. 496.

The collector or constable, and the town treasurer, or treasurer and collector, if one person is both, each have the same

powers and are subject to the same duties and obligations in relation to free high school precinct taxes, as to town taxes; and they and the assessors shall be allowed by the precinct for their services, a compensation proportionate to what they receive from the town for similar services. R. S. c. 15, § 70; 31 Me. 281; 41 Me. 247; 67 Me. 240.

The town treasurer shall pay the expense of assessing and collecting any free high school precinct tax out of the money of the precinct, upon the order of the selectmen. R. S. c. 15, § 68; 73 Me. 181.

The municipal officers, treasurer and clerk of every town shall meet annually on the first Monday of May, or on the day succeeding, or both, and at such meeting they may license under their hands as many persons of good moral character, and under such restrictions and regulations as they may deem necessary, to be innholders and victualers in said town, until the day succeeding the first Monday in May of the next year, in such house or other building as the license specifies. R. S. c. 29, § 1; 24 Me. 442; 93 Me. 485.

The innholder has no natural right to pursue the business of innholding. It is an exceptional privilege which may or may not be conferred upon him by public authority. His chance for obtaining a license is dependent upon whether the licensing board decides his appointment be necessary and that he sustains a good moral character. The authority involves questions to be determined by the board and not by the applicant. 93 Me. 485.

The municipal officers, treasurer and clerk of each town and plantation constitute a board for preparing lists of jurors to be laid before the town for their approval. R. S. c. 108, § 1.

Upon the issue of pension certificates as provided in chapter one hundred and forty-five of the revised statutes, the treasurer of the city, town or plantation where the pensioner resides shall be notified thereof, and shall pay quarterly from the treasury of said city, town or plantation, to the pensioner, the amount specified and for the time specified in said certificate, and take vouchers therefor, and the same shall be reimbursed to said treasurer, from the treasury of the state. R. S. c. 145, § 6.

A bounty of five dollars for every wolf killed in any town shall be paid by the treasurer thereof to the person killing it, upon compliance with the following conditions: No bounty shall be paid unless the claimant, within ten days after he has

killed such animal, or has returned from the hunting in which he killed it, exhibits to the town treasurer the entire skin thereof, with the ears and nose thereon, in as perfect a state as when killed, except natural decay, and signs and makes oath to a certificate, which oath said treasurer may administer, in which he shall state that he killed such animal, and the time and place which shall be within the state; and the treasurer shall thereupon cut off the whole of the ears and nose from such skin, and entirely destroy them by burning; then he shall pay the bounty and take the claimant's receipt therefor upon the same paper with such certificate. The town treasurer shall immediately make upon the same paper a certificate under oath addressed to the treasurer of state, that he first cut off the ears and nose from the skin of such animal and destroyed them by burning, and then paid said bounty to the claimant. Said certificates and receipts shall annually in December be transmitted to the treasurer of state, and by him laid before the governor and council as early as convenient; and when allowed by them shall be paid by the treasurer of state to such towns. The certificate shall be in the following form:

CLAIMANT'S CERTIFICATE.

To the treasurer of — I hereby certify that on the — day of — A. D. 19—, at —, in the State of Maine, I killed the wolf the skin of which I now exhibit to you; and I claim the bounty allowed by law for killing the same.

Dated at —, this — day of — A. D. 19—.

—, *Claimant*.

Subscribed and sworn to before me the day and year aforesaid.

—, *Treasurer of* —.

Bounty on bears killed in Oxford county, P. L. 1903, c. 233.

CLAIMANT'S RECEIPT.

On this — day of — A. D. 19—, I received of — treasurer of —, — dollars, being the bounty allowed by law for killing the wolf described in the above certificate.

—, *Claimant*.

TREASURER'S CERTIFICATE.

I hereby certify that, as required by law, I first cut off the whole of the ears and nose from the skin of the wolf described in the foregoing certificate and destroyed the same by burning, and then paid to said — the bounty for which I have taken his receipt as above.

Dated at — this — day of — A. D. 19—.

—, *Treasurer of* —.

Subscribed and sworn to before me the day and year aforesaid.

———, *Justice of the Peace.*

R. S. c. 32, § 14.

The treasurer of each town shall keep an accurate and separate account of all moneys received and expended by him under the provisions of this chapter. R. S. c. 4, § 47.

When a town treasurer is elected and qualified, the clerk shall communicate his name to the treasurer of state; and no city, town or plantation shall receive any money from the treasurer of state until the name of its treasurer has been so communicated. R. S. c. 4, § 43.

If money not raised for a legal object, is assessed with other moneys legally raised, the assessment is not void; nor shall any error, mistake, or omission by the assessors, collector or treasurer, render it void; but any person paying such tax, may bring his action against the town in the supreme judicial court for the same county, and shall recover the sum not raised for a legal object, with twenty-five per cent interest and costs, and any damages which he has sustained by reason of the mistakes, errors or omissions of such officers. R. S. c. 10, § 31. See §§ 83, 87; c. 4, § 10; c. 9, § 63; c. 15, § 69; 5 Me. 403; 15 Me. 262; 27 Me. 147; 30 Me. 411; 48 Me. 444; 51 Me. 376; 58 Me. 532; 59 Me. 493; 65 Me. 23; 68 Me. 356, 357; 69 Me. 65; 71 Me. 184; 77 Me. 415; 78 Me. 276, 282; 82 Me. 156; 90 Me. 245, 494; 92 Me. 529; 94 Me. 358, 495.

Treasurers of state, counties, towns and corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors. R. S. c. 84, § 27; 74 Me. 219.

Where trespasses are committed on buildings, enclosures, monuments or mile stones, belonging to a county, town or parish, the treasurer of such corporation may sue for the damages in its name; if the property injured belongs to a school district, the treasurer of the town may sue in the name of such district. R. S. c. 97, § 10.

A bounty of one dollar for each and every seal killed in the waters of this state shall be paid by the treasurer of the town in which such seal is killed, to the person exhibiting to said treasurer the nose of such seal within thirty days after said seal was killed. Such treasurer shall destroy it, and shall then proceed as in section fourteen of chapter thirty-two. R. S. c. 41, § 53.

The treasurers of towns, at the expense thereof, shall con-

stantly keep a town seal, and, as town standards, a complete set of beams, weights, and copper and pewter measures, conformable to the state standards, except that the bushel measure, and the half bushel, peck and half peck measures may be of wood instead of copper or pewter, but of the same dimensions, and except also a nest of troy weights other than those from the lowest denomination to eight ounces; they shall cause all beams, weights and measures, belonging to their towns, to be proved and sealed by the state or county standards once in ten years, from July one, eighteen hundred and forty; and for every neglect of said duty they forfeit one hundred dollars, half to the town, and half to the prosecutor. R. S. c. 44, § 4.

If the constable or collector of any town or parish, to whom taxes have been committed for collection, neglects to collect and pay them to the treasurer named in the warrant of the assessors by the time therein stated, such treasurer shall issue his warrant, returnable in ninety days, and in substance as follows, to the sheriff of the county or his deputy, who shall execute it.

A. B., treasurer of the — of —, in the county of —, to the sheriff of said county, or his deputy, GREETING.

Whereas C. D., of — aforesaid, (addition) on the — day of —, 19—, being a — of taxes granted and agreed on by the — aforesaid, had a list of assessments duly made by the assessors of the — aforesaid, amounting to the sum of \$—. —, committed to him with a warrant under their hands, directing and empowering him to collect the several sums in said assessment mentioned, and pay the same to the treasurer of the — aforesaid by the — day of —, 19—, but the said C. D. has been remiss in his duty by law required, and has neglected to collect the several sums aforesaid, and pay them to the treasurer of the — aforesaid; and there still remains due thereof the sum of \$—. —, and the said C. D. still neglects to pay it: You are hereby, in the name of the state, required forthwith to levy the aforesaid sum of \$—. —, by distress and sale of the estate, real or personal, of said C. D., and pay the same to the treasurer of said —, returning the overplus, if any, to said C. D. And for want of such estate, to take the body of said C. D., and him commit to the jail in the county aforesaid, there to remain until he has paid the said sum of \$—. —, with forty cents for this warrant, together with your fees, or he is otherwise discharged therefrom by order of law; and make return of this warrant to myself, or my successor, as treasurer of said —, within ninety days from this time, with your doings therein.

Given under my hand, this — day of —, in the year 19—.

—, *Treasurer of* —.

R. S. c. 10, § 48; 17 Me. 447; 19 Me. 374; 33 Me. 483; 64 Me. 190; 73 Me. 181; 71 Me. 411; 82 Me. 45.

On each execution or warrant of distress issued by the treasurer of state, or by the treasurer of a county, town or parish, against a constable or collector, or against the inhabitants of a town, and delivered to a sheriff or his deputy, he shall make return of his doings to such treasurer, within a reasonable time after the return day therein mentioned, with the money, if any, that he has received by virtue thereof; and if he neglects to comply with any direction of such warrant or execution, he shall pay the whole sum mentioned therein. When it is returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for the sum due on the return of the first; and so on, as often as occasion occurs. A reasonable time after the return day shall be computed at the rate of forty-eight hours for every ten miles distance from the dwelling-house of the sheriff or his deputy to the place where the warrant is returnable. R. S. c. 10, § 49.

When a sheriff or deputy is deficient as aforesaid, such treasurers may direct warrants to a coroner of the county, requiring him to distrain therefor upon the delinquent's real or personal estate; and the coroner shall execute such warrants as a sheriff does on deficient constables and collectors. R. S. c. 10, § 50.

At any meeting, when it votes to raise a tax, a town may agree on the abatement to be made to those who voluntarily pay their taxes to the collector or treasurer at certain periods, and the times within which they are so entitled; and a notification of such votes, and the time when such taxes must be paid to obtain the abatement, shall be posted by the treasurer in one or more public places in his town, within seven days after such commitment; and all who so pay their taxes are entitled to such abatement; but no person shall receive an abatement of more than ten per cent of his tax; and all taxes not so paid shall be collected by the collector or his deputy, under the other provisions of this chapter. R. S. c. 10, § 66.

The collector of taxes of any town or the treasurer of any town who is also a collector, may issue his warrant to the sheriff of any county, or his deputy or to a constable of his town, directing him to distrain the person or property of any person not paying his taxes within three months after the date of the original commitment which warrant shall be of the same tenor as that prescribed to be issued by municipal officers or assessors to collectors with the appropriate changes returnable to the collector or treasurer issuing the same in thirty, sixty or ninety days. R. S. c. 10, § 67; 96 Me. 269.

When such collector or treasurer thinks that there is danger of losing by delay a tax assessed on any individual, he may distrain his person or property before the expiration of the time named in the preceding section. R. S. c. 10, § 68.

Before such officer serves any such warrant, he shall deliver to the delinquent, or leave at his last and usual place of abode, a summons from said collector or treasurer, stating the amount of tax due, and that it must be paid within ten days from the time of leaving such summons, with twenty cents for the officer for leaving the same; and if not so paid, the officer shall serve such warrant the same as collectors of taxes may do, and shall receive the same fees as for levying executions in personal actions. R. S. c. 10, § 69; 96 Me. 270.

Form of Summons.

To A. B., of ———.

The taxes assessed against you in the town of ———, for the year ———, and committed to me for collection, are as follows: [*here state the amount of the taxes*] you are hereby notified that the same must be paid to me, within ten days from the day of leaving this summons, with the additional sum of twenty cents for the officer leaving this summons.

C. D., *Treasurer and Collector of* ———.

The municipal officers, treasurer and clerk of every town shall meet annually on the first Monday of May, or on the day succeeding, or both, and at such time and place in said town as they appoint, by posting notices in two or more public places therein, at least seven days previously, stating the purpose of the meeting; and at such meeting they may license under their hands as many persons of good moral character, and under such restrictions and regulations as they deem necessary, to be innholders and victualers in said town, until the day succeeding the first Monday in May of the next year, in such house or other building, as the license specifies. And at any meeting so notified and held, they may revoke licenses so granted, if in their opinion there is sufficient cause. R. S. c. 29, § 1.

No person shall receive his license until he has given his bond to the treasurer, to the acceptance of the board granting it, with one or more sureties in the penal sum of three hundred dollars, in substance as follows, namely:

Know all men that we ———, as principal, and ———, and ———, as sureties, are held and stand firmly bound to ———, treasurer of the town [*or city*] of ———, in the sum of three hundred dollars, to be paid to him, or his successor in said office; to the payment whereof we bind ourselves, our heirs,

executors and administrators, jointly and severally by these presents. Sealed with our seals.

Dated the — day of —, in the year 19—.

The condition of this obligation is such that, whereas the above bounden — has been duly licensed as a — within said town [*or city*] until the day succeeding the first Monday of May next; now if in all respects he shall conform to the provisions of law relating to the business for which he is licensed, and to the rules and regulations as provided by the licensing board in reference thereto, and shall not violate any law of the state relating to intoxicating liquors, then this obligation shall be void, otherwise shall remain in full force.

R. S. c. 29, § 2.

The licensing board may, at any other time, at a meeting specially called, and notified as aforesaid for the consideration of any application therefor to them made, grant such license on like conditions; but all such licenses expire on the day aforesaid. R. S. c. 29, § 3.

Every person licensed shall pay to the treasurer, for the use of such board, one dollar; and the clerk shall make a record of all licenses granted. R. S. c. 29, § 4.

Collectors of taxes have certain duties to perform in matter of licensing itinerant venders. See title Collector of Taxes. R. S. c. 45, § 7.

The municipal officers, treasurer and clerk constitute a board for preparing lists of jurors to be laid before the town for their approval. R. S. c. 108, § 1.

No money appropriated by law for public schools shall be paid from the treasury of any town, except upon the written order of its municipal officers; and no such order shall be drawn by said officers, except upon presentation of a properly avouched bill of items. The unexpended balance of all moneys raised by towns, or received from the state for the payment of wages and board of teachers, fuel, janitor's services, conveyance or tuition and board of scholars, shall be credited to the school fund of the town and shall be brought forward in the item of resources for the year following that in which said unexpended balance occurred. This clause, relating to unexpended balances, shall not apply to cities. R. S. c. 15, § 15.

Any town treasurer, or his successor in office may maintain an action on the case against any bank, or other corporation, and recover therein the tax assessed if unpaid, and the lawful charges upon any share thereof, if any dividend thereon has

been paid after such tax was assessed, provided the notice prescribed in the preceding section has been given; but judgment shall not be rendered in such action for a larger sum in damages than the dividend thus paid, and all such taxes and charges may be recovered in one suit, if said treasurer so elects. R. S. c. 9, § 34.

The duties of the treasurer in matter of taxes will be found under title Collector of Taxes. R. S. c. 10, § 77 *et seq.*

The collector or constable, and the town treasurer, or treasurer and collector, if one person is both, each have the same powers and are subject to the same duties and obligations in relation to free high school precinct taxes, as to town taxes; and they and the assessors shall be allowed by the precinct for their services, a compensation proportionate to what they receive from the town for similar services. R. S. c. 15, § 70.

Any person owning or interested in a lot in a public burying ground of a city or town, may deposit with the treasurer of such city or town, a sum of money not exceeding five hundred dollars, for the purpose of providing for the preservation and care of such lot, or its appurtenances, which sum shall be entered upon the books of the treasurer, and held in accordance with the provisions of the ordinances or by-laws of such city or town, in relation to burials. R. S. c. 21, § 16.

CHAPTER XXXV.

TOWN WAYS AND PRIVATE WAYS.

The municipal officers of a town may on petition therefor, personally or by agency, lay out, alter or widen town ways, and private ways for any inhabitant or for owners of cultivated land therein, if such inhabitant occupies, or such owner has cultivated land in the town which such private way will connect with a town way or highway. They shall give written notice of their intentions to be posted for seven days, in two public places in the town and in the vicinity of the way, describing it in such notice, and they shall determine whether it shall be a town way or private way; and if a private way, whether it shall be subject to gates and bars. R. S. c. 23, § 16.

Form of Notice to Lay Out Way.

Notice is hereby given, that it is the intention of the selectmen of the town of —, upon the application of —, to lay out [*if to widen and straighten, say "to make wider and straighter"*] a town way in said town, for the use of said town, beginning at — and ending at —, in said town, and the route of which is as follows, viz.: —, and that they will meet for said purpose on the — day of — instant, at —, in said town, at — o'clock in the — noon; and all persons interested therein will govern themselves accordingly.

Given under our hands, this — day of —, 19—.

A. B.,
C. D., } *Selectmen of —.*
E. F., }

A written return of their proceedings containing the bounds and admeasurements of the way, and the damages allowed to each person for land taken, shall be made and filed with the town clerk in all cases. The way is not established until it has been accepted in a town meeting legally called after the return has been filed, by a warrant containing an article for the purpose. R. S. c. 23, § 18.

Form of Laying out a Town Way.

The subscribers, selectmen of —, upon the application of — to lay out a town way in said town, beginning at — and ending at —, having given seven days' notice of our intention to lay out the same, and stated in said notice the termini thereof, by posting said notices in two public places in said town, and in the vicinity of the proposed route, to wit, at — and at —, in said town, on the — day of — instant, and having met at the time and place appointed for that purpose, and having personally examined the route proposed, are of opinion that there is occasion for a new town way for the use of said town as proposed; we therefore lay out said way as follows: beginning at the schoolhouse in district No. 5 in said town; thence running south nine degrees east through land of A. B., thirty rods to a stake; thence north thirty degrees west of land of G. H., to a stake near the house of I. O., the line described to be the middle of the highway, and the highway to be — rods wide; and we agree with the owners of the land, over which the road passes, for their damages, as follows, to wit: to the said A. B., to pay him \$ —; to the said E. F., to pay him \$ —; and to the said G. H., to pay him \$ —; to be paid by said town before said road is opened [*or as the case may be*]; we award to said A. B. \$ —, to said E. F. \$ —, and to said G. H. \$ —, for their damages, to be paid by said town to them respectively; and we allow the several owners respectively, — months to take off the wood standing or growing on said land, and to remove the fence. Such laying out, with the boundaries and admeasurements, has been filed with the town clerk, on the — day of

—, being seven days before this meeting; and we now hereby report such laying out, with the boundaries and admeasurements of the same, to said town, at the meeting of the inhabitants regularly warned and notified, for them to accept and allow the same.

Given under our hands, this — day of —, 19—.

A. B., }
C. D., } *Selectmen of —.*
E. F., }

The notice and form for laying out a private way for the use of one or more inhabitants of any town, may be the same as in sections two and four, except omitting the words “for the use of said town,” and adding instead, “for the use of — inhabitants [or ‘*proprietors of land*’] of said town.”

The form, in case of widening and straightening a town way, may be the same as in section four, omitting the words “occasion for a new town way,” and adding “occasion for widening and straightening the town way.”

The notice, laying out by the selectmen, and the doings of the town thereon, should be recorded at length by the town clerk, in the books of the town, and attested by him thus: “A true copy from the original. Attest: A. B., town clerk.” And he should preserve the original on file.

If the width of the road is not stated, half of the road will be presumed to be on each side of the line described; but it should be stated.

The power of selectmen to lay out town or private ways should not be exercised unless the public necessity and convenience require it, and unless the rights of individuals through whose land the road passes shall be considered.

They may lay out a way as aforesaid for the hauling of merchandise, hay, wood or lumber, to be used only when the ground is so covered with snow that such hauling shall not break the soil. When so laid out, they shall state in their return the purposes for which it is laid, and that it shall be used only in the winter season, and shall order the persons for whose accommodation it is laid, to pay into the town treasury an amount equal to the damages of such location for the benefit of the owner of the land over which it is laid, and the expenses of such location, and it shall not be accepted by the town until such amount is so paid. No town shall be liable for damage to any person traveling on such way. R. S. c. 23, § 17.

A town, at a meeting called by warrant containing an article for the purpose, may discontinue a town or private way; and

the municipal officers shall estimate the damages suffered by any person thereby. *Ib.* § 19. It may, by an ordinance, set off portions of its ways or streets as sidewalks, and require them to be kept clear of snow and other obstructions; and may authorize trees to be planted by their side. R. S. c. 4, § 93.

If any person's property is damaged by laying out, altering or discontinuing a highway or town way, the county commissioners or the municipal officers of towns shall estimate the amount, and in their return state the share of each separately; damages shall be allowed to the owners of reversions, and remainders, and to tenants for life, and for years, in proportion to their interests in the estate taken; but said commissioners or officers shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located, has been entered upon and possession taken, for the purpose of construction or use. R. S. c. 23, § 7.

The damages for a town way shall be paid by the town; for a private way, by those for whose benefit it is stated in the petition to be, or wholly or partly by the town, if under an article in the warrant to that effect it so votes at the meeting accepting such private way; or by cities, if it is proposed in the return laying out such way. Any person aggrieved by the estimate of such damages may have them determined as provided in section eight of chapter twenty-three of the revised statutes by written complaint to the supreme judicial court, returnable at the term thereof next to be held within the county where the land lies, after sixty days from the date of the establishment, alteration or discontinuance of such way by the town at its town meeting. The complaint shall be served at least thirty days before said term by delivering in hand an attested copy to the clerk of the town where the land lies, and by posting attested copies in two public and conspicuous places within said town and in the vicinity of the way. But the final judgment shall be recorded in said court, and shall not be certified to the county commissioners. When any person aggrieved by the estimate of damages for his land taken for a town or private way, honestly intended to appeal therefrom and has by accident or mistake omitted to take his appeal within the time provided by law, he may at any time within six months after the expiration of the time when said appeal might have been taken, apply to any judge of the supreme judicial court in term time or vacation, stating in his said application the facts of his case, and said judge, after due notice and hearing, may grant to such petitioner permission to take his said

appeal to such term of said court as said judge shall direct, and on such terms as said judge shall order, and the subsequent proceedings thereon shall be the same and with the same effects as if said appeal had been seasonably taken. R. S. c. 23, § 20.

No such way shall be opened or used until after sixty days from its acceptance by the town, and if within that time notice of such appeal or petition is filed with the town clerk, such way shall not be opened or used until finally located by the appellate tribunal. R. S. c. 23, § 22.

When a town way, private way or highway, is wholly or partly discontinued by the commissioners, a time shall be fixed for it. And when laid out by them the way shall be regarded as discontinued, if not opened within six years from the time allowed therefor. When town or private ways are finally located by municipal officers, unless the land is entered upon and possession taken for said purpose within two years after the laying out or alteration, the proceedings are void. R. S. c. 23, § 38.

When a way or street is raised or lowered by a road commissioner or person authorized, to the injury of an owner of adjoining land, he may within a year, apply in writing to the municipal officers, and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town, and any person aggrieved by said assessment, may, in addition to any other remedy now provided by law, have them determined, on complaint to the supreme judicial court, in the manner prescribed in section twenty of this chapter. Said complaint shall be filed at the term of the supreme judicial court, next to be held within the county where the land is situated, after sixty days from the date of the assessment. R. S. c. 23, § 68.

When a way is legally discontinued, the public right of passage ceases, and the owner has his land again, free from incumbrance; but if it is discontinued before it is opened, a person who sustains damage by such discontinuance is entitled to recover such damage.

The authority of towns extends only to town and private ways.

The contractors with a town to make and open a county road, which the town is bound to build, are not restricted in reference to suitable means in which to effect their object, provided opportunity is given to the owner of land over which the road passes

to take from it such things as he has a legal right to do. 36 Me. 551.

An unrestricted vote to discontinue a town way takes effect from its passage. 37 Me. 52. Legal laying out may be inferred, after a long time, from facts tending to show that alleged way was a town way. *Ib.* A town way which had its origin and continuance by virtue of a legal location, may be discontinued, although used for more than twenty years. *Ib.*

Use of way for three years held to be a sufficient opening to render awarded compensation payable. 83 Me. 250.

Town may be indicted for neglecting to open a way within the time limited. 86 Me. 277.

Municipal officers must maintain highway monuments and replace them forthwith when destroyed. R. S. c. 23, § 11.

Courts of sessions have no original jurisdiction in laying out town or private ways; their jurisdiction is merely appellate; and, even then, is confined to two cases: where the selectmen shall unreasonably refuse to lay it out, and where the town shall unreasonably delay or refuse to approve and allow the same. 10 Me. 24.

By statute eighteen hundred and thirty-nine, chapter three hundred and sixty-seven, county commissioners were deprived of the power to lay out roads not extending into two or more towns, unless where a town had refused to lay out a private way from a town or county road to the lot or lots of land on which the petitioner should live. 21 Me. 377.

While that statute was in force, the mere refusal of the selectmen to lay out a private way, where the town had not acted in the matter, did not give jurisdiction to the commissioners. *Ib.*

A town way may be laid out on the petition of an inhabitant, whether he is an owner or occupier of land or not; but a private way can only be laid out either for residents who occupy, or non-residents who own, cultivated land which such way will connect with a town or county road. 62 Me. 325.

Under revised statutes of eighteen hundred and fifty-seven, chapter eighteen, section eighteen, the selectmen may lay out a town or private way for the inhabitants of the town, from whatever place it leads. 51 Me. 570.

But the selectmen can lay out such a way for persons not inhabitants, only when the petitioners are the owners of culti-

vated land in the town, and the way leads from such land to a town or highway. Ib.

By the charter of the city of Portland, the city council, composed of the mayor, aldermen, and city council, have all the powers to locate, widen, or otherwise alter streets and public ways, which, by the general law, is conferred upon the inhabitants and selectmen of towns. 45 Me. 241; 57 Me. 42.

By section three, of the city ordinances, the city council are authorized to refer all applications for the location or alteration of streets to a committee, to inquire into the matter and report. Such committee, for this purpose, represent the city council; and all notices to parties to appear and be heard before such committee, are regarded as notices to appear and be heard before the city council, to whom everything material may be expected to be reported. It is not necessary that parties should have notice to appear and be heard before the city council. Ib.

The location or alteration of a street, and awarding damages to parties injured thereby, is not an act for the appropriation of money; and it is not necessary that such act should be approved by the mayor. 45 Me. 241.

A way can be located across tide water, only by authority of the legislature, which must be strictly pursued. 64 Me. 456.

It is not necessary, that the common convenience should be promoted, to authorize the laying out of private ways. 21 Me. 377.

All which the statute requires, as evidence that a road, laid out by the selectmen, is for the benefit of the town, or of an individual, is, that it be approved and allowed by the town, in a legal meeting called for the purpose, or by the county commissioners on appeal. 18 Me. 183.

The records of the city council need not show that they adjudge the widening of a street to be of "common convenience and necessity," before they proceed to make the alteration. 61 Me. 434.

It is necessary to the legality of a town way, that due notice be previously given by the selectmen to all persons interested in the location; that they make return of their doings, under their hands, to the town; and that it be accepted and allowed by the town, at a legal meeting called for that purpose. The two latter facts may be proved by the record; but the return of the selectmen is not sufficient evidence of the notice. 3 Me. 438.

What is reasonable notice to be given by the selectmen to the owner of land over which they are about to lay out a road, will depend upon circumstances. Where the owners were trustees of an academy, a majority of whom lived in the town, notice of seven days was sufficient. 11 Me. 109.

The selectmen are bound to give notice to the owner of the land, and to conform to the other provisions of the statute, though, by a reservation in his title deed, such owner be not entitled to damages. 10 Me. 335.

Where the return of a town road showed that it was laid out by a majority of the selectmen, at a meeting held at a specified time and place, in pursuance of notice in a public newspaper published in the same town, it was *Held*, to be good. 12 Me. 271; 18 Me. 344.

Notice of the intended location of a town way by the selectmen, may be given, either to the mortgager or mortgagee of the land. 13 Me. 250.

Where a town way has been opened, publicly used, and acquiesced in, the legal presumption is, that the owners of the land were duly notified. 3 Me. 438.

That a land owner had due notice of the selectmen's meeting to locate a town way, may be inferred from a notification seasonably inserted in a newspaper published in his neighborhood. 35 Me. 242.

A statement, in the record of the proceedings, that notice was given by the selectmen before they proceeded to act, is, *prima facie*, evidence of the fact. 18 Me. 183.

Under section nine, of the charter of the city of Portland, providing that the city council "have exclusive authority to lay out, alter, or discontinue any and all streets," etc., in the city, a notice reciting a petition to lay out and re-run a certain street, and designating the time and place where and when the committee of the council will meet the parties interested, and will adjudge and determine whether the public convenience requires such street to be laid out, is a sufficient notice. 57 Me. 42.

It is not necessary that the notice be recited in detail in the committee's return; the "westerly part of Congress street," is sufficiently definite. *Ib.*

It is not necessary that the laying out of a town way, by the selectmen, should be preceded by a written or verbal request for that purpose. 10 Me. 335.

In laying out town ways over rangeways, the selectmen are bound to conform to the statute provisions. Ib.

The city council of Bangor, acting under section six, of the city charter, need not lay out and widen a street strictly in accordance with the petition therefor; much must be left to their discretion. 61 Me. 434.

While county commissioners, in the location of highways, must "conform substantially to the description, [in the petition,] without adhering strictly to its limits," it contains no such limitation of the powers of municipal officers in locating town and private ways. R. S. 1871, c. 18, §§ 1 and 18. Ib.

While the city council may make the required location, without giving the notice required by act of eighteen hundred and thirty-five, section one, amendatory to their charter, it has no authority to assess damages or betterments without giving it. Ib.

The first assessment being void, a second assessment may subsequently be made by a different city council from that which made the location. For this purpose, the city council of Bangor must be regarded as a continuing body. Ib.

The proper width of a street, must depend upon the amount of travel passing over it, upon the business transacted in it, and upon the comfort of those residing or doing business upon it. 36 Me. 518.

With a view to such uses, the authorities may rightfully locate streets in different parts of the city, varying much in their widths, and consequent accommodations. Ib.

The act of eighteen hundred and forty-five, chapter two hundred and fifty-six, does not apply to the establishment of public streets. Ib.

If the return of the selectmen omit to state that their notices were posted "in the vicinity of the proposed route," the court cannot determine the road to have been legally established. 43 Me. 575.

Where the selectmen of a town locate a highway upon the earth, erecting monuments on each side thereof, and make return of the road to the town, which is duly accepted; and there is a variance between the location by monuments and the return, the return must govern. 14 Me. 341; 25 Me. 300.

The return of the proceedings of the selectmen of a town, in laying out a road or way, should distinctly state whether it was

laid out as a town way, or a private way. It is not to be inferred from other facts. 26 Me. 172.

If the return of the selectmen, laying out a road, describe it as "a town road," it will be sufficient, though it do not state for whose benefit it was laid out. 12 Me. 32, 271.

The selectmen are not required to state, in their return, that the way will be beneficial to the town or to some one or more of the inhabitants. 18 Me. 183.

The return of the laying out of a road, must be signed by a majority of the selectmen; but they may depute to one of their number, or to any other person, the actual location, by running out the road, and marking and setting up monuments. 18 Me. 344.

And where one of their own number is employed, it is immaterial whether there had been a previous consultation, or it was subsequently approved and ratified. Ib.

The private and special law of eighteen hundred and sixty-nine, chapter two hundred and twenty-seven, authorized the location of a way across Long Creek, in Cape Elizabeth, and provided that it should be by a bridge over the tide waters of this creek, with a suitable draw, and subject to the approval of the harbor commissioners of Portland: *Held*, that a location making no mention of bridge or draw, and not approved by the harbor commissioners, was unauthorized and void, and must be quashed upon certiorari. 64 Me. 456.

It is not necessary to the legality of a town way, that the return of the selectmen should be recorded before it is offered to the town for acceptance. 13 Me. 250; 18 Me. 183.

The act of locating by the selectmen should precede the issuing a warrant to call a meeting of the inhabitants to act upon the subject, and it must so appear of record. 10 Me. 335; 21 Me. 169; 23 Me. 123; 16 Me. 301.

A way across the private lands of a citizen, cannot be established by a town vote of acceptance, without any previous location by the selectmen. 60 Me. 288.

Where, after the location of a road by the selectmen, and their return, the town voted "to accept the road;" after which another vote was passed, "to postpone the further consideration" of the road to an adjourned meeting; the latter vote did not affect the former. 11 Me. 109.

Where the return was of a road laid out over a rangeway, describing it particularly, and the vote of the town was "to accept the report of the selectmen laying out the rangeway near J. M.'s," this is virtually an approval and allowance of the road as located. 12 Me. 32.

A vote of the town, prior to the laying out by the selectmen, that the owners of the land, over which the road was contemplated, might permit their fences to remain for one year, has no legal operation. Ib.

The acceptance by the city council of the city of Portland, of the report of the committee appointed under section three, of the city ordinances, locating or altering a street, is a sufficient compliance with revised statutes of eighteen hundred and forty-one, chapter twenty-five, section twenty-nine. 45 Me. 241.

A conditional acceptance of a town or private way by a town, is void. And there is no provision, as in case of highways laid out by county commissioners, that a town or private way may be considered as not laid out or established, if the damages assessed should be greater in amount than the public convenience would require to be paid. 26 Me. 172; 48 Me. 456.

If a town refuse to accept a town or private way laid out by the selectmen on petition of the inhabitants thereof, from whatever place in the town it may lead, the aggrieved party may petition the county commissioners to lay out and establish the same. 51 Me. 570.

The unreasonableness of their refusal should be adjudged by the commissioners, and entered of record, as the foundation of their jurisdiction in laying out the road, or it will be error. 8 Me. 271; 10 Me. 24.

The adjudication of the court of sessions, that the town unreasonably refused, is final and conclusive upon that point. 12 Me. 271.

It is competent for a committee appointed by the court of sessions, adhering to the termini, to vary the way from the laying out by the selectmen. Ib.

Where no objection was taken, that one of that committee was not a freeholder, until after the return was made and accepted, the objection will be considered as waived. Ib.

A petition to the county commissioners, for laying out a town way to a highway, not setting out the jurisdictional facts—(as

here, that the refusal of the municipal authorities to lay out was unreasonable)—may be quashed in the supreme court, on report of the committee of appeal. 60 Me. 328.

County commissioners cannot act on a petition, representing that a town has unreasonably refused, or delayed, to allow and approve a town way legally laid out, and praying that the commissioners accept and approve it, unless the petition or the record of the court shows that the application was seasonably made to them. 42 Me. 478; 30 Me. 19.

A road laid out by the selectmen is still a town or private way, when brought before the commissioners by an appeal from the action of the town; and they are required to pass such judgment, as the town should have passed. 18 Me. 183.

County commissioners are authorized to lay out a way, on the unreasonable refusal of the selectmen, not only for the benefit of one or more individuals, but where the way would be of general benefit. 12 Me. 210.

On appeal to the county commissioners, they may lay out a town or private way that substantially corresponds with the way prayed for in the petition. 51 Me. 570.

The commissioners had no power to establish or act upon, private ways, unless it appeared that the petitioners lived upon the lot or lots which were to be opened to a town or county road. 21 Me. 377.

Under revised statutes of eighteen hundred and forty-one, chapter twenty-five, section thirty-four, county commissioners have power to approve and allow a town way, as laid out by the selectmen, leading from one town road to another, and passing through the land of the applicant under his possession and improvement, if the town unreasonably refuse or delay to approve thereof. 25 Me. 69.

The proceedings of the commissioners will be void, in allowing and approving such town way, unless the petition or record shows that the laying out of the town way with "the boundaries and admeasurements" of the same, was reported to the town, and the location filed with the town clerk seven days, at least, before the meeting for acceptance. 40 Me. 296.

Where a petition by "parties aggrieved" by the refusal of the town to accept a town way, will give the commissioners jurisdiction to "proceed as provided in respect to highways," without

specially alleging all the acts and facts which constitute an unreasonable refusal, etc. 64 Me. 573.

Irregularities appearing upon the face of the proceedings, upon roads within the jurisdiction of the court of sessions, can be corrected only upon certiorari. 12 Me. 271.

The regularity of the proceedings, in laying out a town way, may be contested in an action of trespass, *quare clausum*, against a surveyor who proceeds to open and make it; no certiorari lying to quash the proceedings. 3 Me. 438.

Where a county road, being free, and operating to the injury of a neighboring turnpike, was not legally located, yet the court would not grant a certiorari on the petition of the turnpike corporation; it not being directly affected in any of its vested rights. 8 Me. 292.

The statute of eighteen hundred and twenty-one, chapter one hundred and eighteen, authorized the establishment of highways in unincorporated townships, at the expense of the owners. 33 Me. 457.

By the act of eighteen hundred and forty-one, chapter one hundred and ninety-six, section one, before a road is located across lands not situated within an organized plantation or incorporated town, notice must be given of the pendency of the petition, and of the time and place appointed to consider the same and adjudicate thereon. 38 Me. 492.

The proceedings of the county commissioners, under revised statutes of eighteen hundred and forty-one, chapter twenty-five, section forty-four, must show at whose expense such road is laid out over any one of the townships, whether at the expense of the proprietors, or the county, or partly of each. 46 Me. 332; 38 Me. 492.

And it is not competent for the commissioners to order that one of such townships shall pay the expenses of opening and making such road through other townships. 46 Me. 332.

The commissioners must also decide whether, in their opinion, a township over which such road is laid, would be enhanced in value thereby; and they must assess upon each tract which they consider to be enhanced in value, such sum as in their opinion would be proportionate to the value and benefits likely to result from the establishment of such road. *Ib.*

When a county road exists within the limits of an unincorporated township, the whole township is liable to be taxed to put

it in repair, notwithstanding the easterly half of the township is owned by one set of persons, and the westerly half by another set, and the road is wholly within the westerly half. 63 Me. 567.

Under revised statutes of eighteen hundred and fifty-five, chapter eighteen, section thirty, as amended by act of eighteen hundred and fifty-eight, chapter twenty-three, the land owners have the privilege of paying their proportional part of the expense of building a road through their lands in labor; but the expense of its construction was to be defrayed by assessing upon those lands, enhanced in value thereby, a sum sufficient to build it; and an omission to lay such an assessment, as part of the original proceedings, will vitiate them. 63 Me. 252.

In eighteen hundred and sixty-nine, the county commissioners assumed to lay an assessment, ostensibly to "repair" a road which the land owners had been thus ordered to build three years before, but had not, in fact, built: *Held*, that such assessment was void, because the commissioners had no authority to expend taxes upon a road never legally located; also, because no notice of the assessment was ever given to the land owners. *Ib.*

Through public lands selected for settlement, it is made the duty of the land agent to cause such road to be so located as the public interest and the accommodation of the future settlement require; but the authority to "locate" them is vested in the county commissioners. R. S. 1871 c. 18, § 32; c. 5, § 29; 60 Me. 288.

A dedication by the land agent, would be as unauthorized as a location by him. *Ib.*

An appeal from the decision of county commissioners, refusing to discontinue a road laid out in an unincorporated township, must be heard by the presiding judge, as provided in revised statutes of eighteen hundred and seventy-one, chapter eighteen, section thirty-five, and not by a committee as provided in section thirty-seven, and following sections. 63 Me. 569.

Generally, the damages to be awarded upon a location are those arising from a proper construction of the way. 63 Me. 55.

In revised statutes of eighteen hundred and seventy-one, chapter eighteen, section fifty-three, as amended by chapter forty-six of the acts of eighteen hundred and seventy-two, which provides for the recovery of damages for an injury to the owner of adjoining land by the raising or lowering of a street or way, the

“owner” designated is the owner at the time of the injury. 65 Me. 591.

Where an existing street or road is dug down to the injury of the owner of land adjoining it, it is not an alteration within the meaning of the statute, which will entitle him to damage. 43 Me. 322.

Where, at the time of a conveyance, a road had been laid over the land conveyed, which was an incumbrance, for which the grantor was liable upon his covenants, if the road be afterwards discontinued in part, not having been opened, the claim of the grantee upon the covenants would be limited to the remaining portion. 19 Me. 313.

If a new location be substituted for the part so discontinued, the owner of the land is entitled to compensation for the incumbrance, notwithstanding the discontinuance of the other. Ib.

Where county commissioners, upon petition of parties aggrieved by the unreasonable refusal of a town to accept a town way laid out by the selectmen, have located a way over the plaintiff's land one rod wider than, but in the course of, an old bridle road, subject to gates and bars, and thereafterwards a gate upon his land has been removed by parties unknown to him, and the sill upon which it ran across the old bridle road has been removed by the crew working under a highway surveyor duly appointed by the town, and the road plowed and thrown up, and ever since used unincumbered by gates and bars, and the town by vote has directed the selectmen to settle the damages awarded to plaintiff by the commissioners, there is sufficient evidence that the plaintiff's land has been taken under the location, though the selectmen and highway surveyor testify that it was not their intention to make the town liable under the commissioners' location, and they designed only to repair the road as they had been accustomed to repair the old bridle road, for more than twenty years. 64 Me. 573.

The conversion of a way, dedicated to the use of purchasers of adjoining lots, into a public way, authorizes the award of nominal damages only. 60 Me. 313.

Where a town way, located by the selectmen, is established by the court of sessions, upon refusal of the town to allow it, its character is not thereby changed to a county road; but the payment of damages is to be made by the town. 12 Me. 271.

The location by the selectmen, and acceptance by the town, of a private way for the benefit of individuals, or of a bridge corporation, and the assessment of damages by the selectmen, gives to the owner of the land, for whom the damages were assessed, no right of action against the town; nor is such right of action given by statute eighteen hundred and twenty-one, chapter one hundred and eighteen, nor statute eighteen hundred and twenty-eight, chapter three hundred and ninety-nine. 11 Me. 422.

If a county road be laid and accepted over the lands of an individual, to whom damages are awarded by the court, and paid by the town, and the road is afterwards discontinued without being opened, the town cannot recover back the money paid. 2 Me. 179.

The county in which proceedings for the location of a highway were commenced and closed, is alone liable for damages to the land owners, although, before the road was completed, that part of the county embracing the location had been set off and annexed to another county. 45 Me. 419; 25 Me. 300.

Petitioners for an increase of damages for the location of highway, can make their application to the county commissioners at any adjournment of the second next regular session after the location; and such petition must be regarded as legally pending for that purpose until the close of the session. 44 Me. 368; 12 Me. 210.

A committee, appointed on a petition for increase of damages, under statute eighteen hundred and twenty-one, chapter one hundred and eighteen, section one, cannot act by majority. 21 Me. 390.

By the provisions of those statutes, the town litigant is answerable both for damages and costs, where an individual obtained an increase of damages awarded by the commissioners, on the location of a town road. 12 Me. 210.

The supreme judicial court will not grant a mandamus to county commissioners, to correct their allowance of costs, on a successful petition for increase of damages. 24 Me. 151.

Damages cannot be separately estimated as done to the soil taken for a way, and to a structure thereon, but must be assessed as a whole, including the costs of removal, if the structure be removable. 64 Me. 408.

Taking for a way land already used for that purpose, takes all things upon it adapted to that use. Ib.

In the assessment of damage done to an individual by the establishment of a city street, requiring a removal of his building, a provision that he should not be required to move it until necessary for the opening of the street, requires no special notice to him of the time for the removal. But that time would be sufficiently indicated to him by the progress made in the formation of the street. 34 Me. 74.

The provision of revised statutes of eighteen hundred and fifty-seven, chapter eighteen, section twenty-one, that "any person aggrieved" by the selectmen's estimate of damages, on laying out a private way, may apply for a jury on the question of damages, refers only to persons over whose way the land passes, and was not intended to include the petitioner, for whose benefit the way is laid out, though he may be adjudged to pay the damages. 48 Me. 282.

If interest upon their verdict can be allowed at all by a jury summoned to assess damages under revised statutes of eighteen hundred and fifty-seven, chapter eighteen, section twelve, as amended by chapter thirty-nine of public laws of eighteen hundred and sixty-six, sustained by a land owner, by the location of town way, it can be allowed only from the time when the land was taken, and not from the time of location. 54 Me. 477.

When the official return of the person appointed to preside at the view and hearing of such a jury, has been made and filed in this court, it is conclusive, and no amendment will be permitted. 54 Me. 477.

After entry of a petition to county commissioners, for an increase of damages allowed parties by the municipal officers of a town, for land taken in constructing a road, notice should be given the inhabitants of its pendency. 59 Me. 517.

And the parties must have an opportunity to agree upon a committee to assess damages, and fail to do so before a jury for that purpose will be ordered. The verdict of a jury, thus prematurely ordered, will be set aside. Ib.

Whether the applicant for damages, occasioned by the location of a town way, is or not the owner of the land, is one of the questions to be determined by the jury or committee on the hearing of the parties on such application. 28 Me. 121.

Where, upon an appeal for land damages, occasioned by taking for a street land alleged to belong to the appellant, the parties agreed to "refer" the question of damages "to the following committee," naming them, and the clerk issued a rule to the persons named as referees, who, without objection, heard the parties, and made their report as follows: "That Jane P. Thurston, at the time of laying out and establishing of Howard street, named in her appeal, did not own any portion of the land taken by said street, and was not, and is not entitled to recover any damages from the city therefor; it was *Held*, that the title was a proper element for the consideration of the referees in estimating the damages claimed by the appellant; and that she cannot now object that the persons to whom was submitted the determination of the question of damages, acted as referees, rather than as a committee. 63 Me. 149.

Upon a petition for a jury to determine the damages caused by the location of a railroad, the county commissioners issued their warrant, returnable before themselves, when the statute required it to be made returnable before the supreme judicial court. And, although the warrant and verdict of the jury were in fact returned as the statute directed, the proceedings were *Held*, invalid. 45 Me. 263.

To recover for damage done to a land holder, by the location of a town road, he must pursue the mode prescribed by revised statutes of eighteen hundred and forty-one, chapter twenty-five, section thirty-one. Such recovery cannot be had by a statute submission of the claim to referees. 37 Me. 86.

In a suit against the town, for the damages awarded by the commissioners, payable when the plaintiff's land has been taken by the town under the commissioners' location, the court will not inquire whether the commissioners' location might not be quashed on certiorari, where the case shows that the commissioners had jurisdiction, and no proceedings to quash the record have been instituted. 64 Me. 573.

When one of the selectmen of a town signs a petition for the laying out of a town way in his town and such selectman is one of the two selectmen who lay out the way and signs the return upon the petition for the way, the action of the selectmen in laying out such way is void, and would be void even if a sufficient number of the selectmen without him concurred in the result. 102 Me. 477.

The laying out of a town way involves the taking of private

property for public use, under statute authority, and all statute requirements must be fully and strictly complied with. 102 Me. 477.

Municipal officers in laying out a way are to exercise their judgment as to the propriety of the way, and as to its location between the termini, and especially in determining whether the prerequisite condition exist which warrant the taking of private property for public use and awarding damages to owners of land so taken. 102 Me. 477.

Damages for land taken for a private way are to be paid by the person at whose request, and for whose benefit the way is laid out. When a private way has been laid out for such petitioner, and has been used by him, he is estopped from denying the regularity of the proceedings in such laying out, in an action by the land owner to recover the awarded damages. 83 Me. 244.

Whenever the city council lay out any new street or public way, or widen or otherwise alter or discontinue any street or way in a city, and decide that any persons or corporations are entitled to damage therefor, and estimate the amount thereof to each in the manner provided by law, they may apportion the damages so estimated and allowed, or such part thereof as to them seems just, upon the lots adjacent to and bounded on such street or way, other than those for which damages are allowed, in such proportions as in their opinion such lots are benefited or made more valuable by such laying out or widening, alteration or discontinuance not exceeding in case of any lot the amount of such benefit; but the whole assessment shall not exceed the damages so allowed. Before such assessment is made, notice shall be given to all persons interested of a hearing before said council, at a time and place specified, which notice shall be published in some newspaper in said city at least one week before said hearing. R. S. c. 23, § 33. 70 Me. 527; 84 Me. 217.

After said assessment has been made upon such lots or parcels and the amount fixed on each, the same shall be recorded by the city clerk, and notice shall be given within ten days after the assessment by delivering to each owner of said assessed lots resident in said city a certified copy of such recorded assessment, or by leaving it at his last and usual place of abode, and by publishing the same three weeks successively in some newspaper published in said city, the first publication

to be within said ten days, and said clerk within ten days shall deposit in the post office of said city, postage paid, a certified copy of such assessment directed to each owner or proprietor residing out of said city, whose place of residence is known to said clerk, and the certificate of said clerk shall be sufficient evidence of these facts, and in the registry of deeds shall be the evidence of title in allowing or assessing damages and improvements, so far as notice is concerned. R. S. c. 23, § 34.

Any person not satisfied with the amount for which he is assessed, may, within ten days after service of the notice provided for by the preceding section in either manner therein provided, by request in writing given to the city clerk, have the assessment upon his lot or parcel of land determined by arbitration. The municipal officers shall nominate six persons who are residents of said city, two of whom selected by the applicant, with a third resident person selected by said two persons, shall fix the sum to be paid by him, and the report of such referees made to the clerk of said city, and recorded by him, shall be final and binding upon all parties. Said reference shall be had and their report made to said city clerk within thirty days from the time of hearing before the municipal officers as provided in section thirty-three. R. S. c. 23, § 35.

All assessments made under the provisions of section thirty-three, shall create a lien upon each and every lot or parcel of land so assessed, and the buildings upon the same, which lien shall continue one year after said assessments are made, and within ten days after they are made, the clerk of said city shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said city; if said assessments are not paid within three months from the date thereof, the treasurer shall sell, at public auction, such of said lots or parcels of land upon which such assessments remain unpaid, or so much thereof, as is necessary to pay such assessments and all costs and incidental charges; he shall advertise and sell the same within one year from the time said assessments are made, as real estate is advertised and sold for taxes under chapter ten, and upon such sale, shall make, execute and deliver his deed to the purchaser, which shall be good and effectual to pass the title of such real estate; the sum for which such sale shall be made, shall be the amount of the assessment and all costs and incidental expenses. Any person to whom the right by law belongs, may at any time within one year from the

date of said sale redeem such real estate by paying to the purchaser or his assigns the sum for which the same was sold, with interest thereon at the rate of twenty per cent a year, and the costs of re-conveyance. R. S. c. 23, § 36.

If said assessments are not paid, and said city does not proceed to collect said assessments, by a sale of the lots or parcels of land upon which such assessments are made, or does not collect, or is in any manner delayed or defeated in collecting such assessments by a sale of the real estate so assessed, then the said city, in the name of said city, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court competent to try the same, and in such action may recover the amount of such assessment, with twelve per cent interest on the same from the date of said assessment, and costs. R. S. c. 23, § 37.

All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain, except for property taken by the United States, the State of Maine, or a county or municipality thereof, or a quasi municipal corporation, and excepting property which when taken is being or is necessary to be used by the owner thereof in the performance of a public duty; shall be made and assessed and the rights of the parties shall be as follows, notwithstanding anything contained in the act granting such right, whether the same has been heretofore, or shall be hereafter passed. P. L. 1905 c. 164, § 1.

All property so taken shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking, which shall describe in detail the property taken, and give the names of the owners thereof, and shall be accompanied by a map showing said property as described. Such location and map shall be filed with the county commissioners of the county where the property is located, who shall indorse the time of filing thereon, and order the location recorded. A copy of said location shall be recorded in the registry of deeds for the place where the property is located. When for any reason, the taker fails to acquire the property authorized to be taken and which is described in such location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect such location, and file a new description thereof; and in such case the taker is liable in damages, only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking,

and the taker shall not be liable for any acts which would have been justified if the original taking had been valid and legal. P. L. 1905 c. 164, § 2.

For all property taken by the exercise of the right of eminent domain the owners are entitled to damages to be paid by the taker and estimated by the county commissioners, on written application of either party, made within three years after such taking; or, if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within one year thereafter, and when no estimate is made within such time the owner may maintain an action of trespass, or have any remedy herein provided. The guardian of a person incapable of giving a valid conveyance whose property is taken, may settle and give a valid release for damages; and persons having any interest in such property have the rights and remedies of owners to the extent of their interest. When requested by the owner said commissioners shall require the taker to give security for the payment of damages and costs, by depositing at its risk, with the clerk, within thirty days, specie, notes or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees, and any balance shall be paid to the taker of such property. P. L. 1905 c. 164, § 3.

In all cases of petition to the commissioners of any county praying for the assessment of damages on account of any property so taken, the notice to the adverse party of the time and place of hearing thereon shall be a personal notice of fourteen days, or by publication of the petition and order of notice thereon in some newspaper published in said county, two weeks successively, the last publication being fourteen days before said hearing. P. L. 1905 c. 164, § 4.

Said commissioners, in awarding damages for property so taken, on the application of the taker, may prescribe such terms and conditions, in all respects for the use of the property taken, by the owner thereof, and by the taker respectively, as will secure the best accommodation of the owners of the property, and the convenient use of the same by the taker. In case of appeal by either party the only question in issue shall be the

amount or measure of damages on the terms and conditions imposed by the commissioners. P. L. 1905 c. 164, § 5.

Said commissioners shall, at a regular session, make a report of their general estimate of damages, stating therein specifically, the terms and conditions imposed by them and the rights and obligations of each party, and cause it to be recorded; their clerk shall then make out a notice to each person, stating the amount of damages awarded to him, which shall be served by an officer on those resident in the state, and upon others, if any, by a publication three weeks successively in a newspaper printed in the county, if any, if not, in the state paper. The expense of notices shall be added to the costs of the proceedings which shall be paid by the taker. P. L. 1905 c. 164, § 6.

Any person aggrieved by the decision or judgment of the county commissioners in relation to damages for property taken, may appeal to the next term of the supreme court to be held in the county where the property is situated, more than thirty days from the date when the report of the commissioners is made, excluding the day of the commencement of the session of the court, which court shall determine the same by a committee of reference if the parties so agree, or by the verdict of its jury; and shall render judgment and issue execution. If the owner appeal and the damage finally recovered is not more than the award of the county commissioners, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs. If the taker appeal and the damage finally recovered is not less than the award of the county commissioners, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs. The appellant shall serve written notice of such appeal upon the opposite party fourteen days at least before the session of said court, and shall at the first term file a complaint setting forth substantially the facts of the case. On the trial exceptions may be taken as in other cases. P. L. 1905 c. 164, § 7.

When the proceedings are closed the taker may deposit with the clerk the sum for which execution was issued with interest thereon to time of deposit, which shall be in full satisfaction of all claims unless a demand has been previously made and payment neglected. P. L. 1905 c. 164, § 8.

When the damages remain unpaid for more than thirty days after they are due and demanded or the security hereinbefore provided for is not deposited, a bill in equity may be filed in

court, in term time or vacation, by the person whose property is taken praying for an injunction against the use or occupation of his property taken. If proceedings for an estimation of damages are not commenced within three years, and the owner of the property files a bill praying therefor, the court may estimate the damages, decree their payment and issue an execution therefor; and the plaintiff shall be entitled to a bill for an injunction. In either case, any justice of the court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting such use and occupation until all damages and costs are paid. The bill shall be entered, service of it made, and continued at the next term after the injunction is issued. At the second term, if payment has not been made, the injunction may be made absolute; and all rights acquired by taking the property cease, and the owner may maintain an action for its recovery and protection. P. L. 1905 c. 164, § 9.

Service of an injunction issued against any person whether a party to the bill or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. The court may order persons violating such injunction, after service, or using the property, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually, and their goods and estate, for the damages, interest, costs, and for additional damages and costs for breach of the injunction. Upon service and return of such order, the court may enter such decree as is just and equitable against such persons, and issue execution accordingly, or may proceed against them as for breach of injunction in other chancery cases. P. L. 1905 c. 164, § 10.

No failure by the owner of the property to make application for the assessment of damages within said three years, shall be held to be a waiver by him of compensation for property so taken. P. L. 1905 c. 164, § 11.

This act shall not apply to petitions for assessment of damages already brought; except as to such petitions, all acts or parts of acts inconsistent herewith, are hereby repealed. This act shall in no way affect section thirty-three of chapter fifty-one of the revised statutes. P. L. 1905, c. 164, § 12.

The provisions of the foregoing act shall not apply to steam railroads, and all acts and parts of acts relating to or applying to steam railroads repealed by the foregoing act are hereby revived. P. L. 1907 c. 70.

CHAPTER XXXVI.

HIGHWAYS—LOCATION, ALTERATION AND DISCONTINUANCE OF.

County commissioners may lay out, alter or discontinue highways leading from town to town, and grade hills in any such highway. Nothing in any city charter shall be so construed as to deprive them of the power to lay out, alter or discontinue county roads within the limits thereof. Responsible persons may present, at their regular session, a written petition describing a way and stating whether its location, alteration, grading or discontinuance is desired, or an alternative action, in whole or in part. The commissioners may act upon it, conforming substantially to the description, without adhering strictly to its bounds. R. S. c. 23, § 1. *Authority of commissioners.* 11 Me. 276; 15 Me. 22; 19 Me. 343; 26 Me. 356, 409; 31 Me. 270; 32 Me. 568; 37 Me. 559; 39 Me. 584; 40 Me. 437; 42 Me. 401; 59 Me. 89; 64 Me. 457; 70 Me. 408; 77 Me. 130; 78 Me. 156; 79 Me. 526; 87 Me. 151; 102 Me. 157. *Petition.* 2 Me. 53; 3 Me. 105; 26 Me. 356, 408; 32 Me. 568; 37 Me. 119; 63 Me. 114; 68 Me. 407, 497; 78 Me. 537; 80 Me. 44.

Being satisfied that the petitioners are responsible, and that an inquiry into the merits is expedient, they shall cause thirty days' notice to be given of the time and place of their meeting, by posting copies of the petition, with their order thereon, in three public places in each town in which any part of the way is, and serving one on the clerks of such towns, and publishing it in some newspaper, if any, in the county. The fact that notice has been so given, being proved and entered of record, shall be sufficient for all interested, and evidence thereof. R. S. c. 23, § 2; 19 Me. 343; 30 Me. 305; 68 Me. 406, 497; 83 Me. 116.

When their decision is against the prayer of the petitioners, they shall order them to pay to the treasurer of the county, at a time fixed, all expenses incurred on account of it; and if they are not then paid, they shall issue a warrant of distress against the petitioners therefor. R. S. c. 23, § 3; 2 Me. 54; 3 Me. 105; 68 Me. 497; 83 Me. 115.

They shall meet at the time and place appointed, and view the way, and there, or at a place in the vicinity, hear the parties interested. If they judge the way to be of common convenience and necessity, or that any existing way shall be altered, graded or discontinued, they shall proceed to perform the duties required; make a correct return of their doings, signed by them, accompanied by an accurate plan of the way, and state in their return when it is to be done, the names of the persons to whom damages are allowed, the amount allowed to each, and when to be paid. When the way has been finally established and opened to travel, they shall cause durable monuments to be erected at the angles thereof. R. S. c. 23, § 4. *Return.* 12 Me. 212; 14 Me. 343; 23 Me. 13, 513; 26 Me. 409; 30 Me. 307; 35 Me. 377; 49 Me. 145; 51 Me. 384; 65 Me. 292; 72 Me. 430; 78 Me. 172; 79 Me. 528; 83 Me. 116; 89 Me. 252; 91 Me. 51. *Angles and monuments.* 25 Me. 304; 35 Me. 377; 49 Me. 148. *Validity of proceedings.* 8 Me. 272, 293; 11 Me. 473; 19 Me. 343; 23 Me. 11, 513; 24 Me. 152; 26 Me. 356, 408; 30 Me. 306; 31 Me. 270; 32 Me. 568; 37 Me. 120, 559; 42 Me. 400; 49 Me. 145; 52 Me. 27; 68 Me. 407; 73 Me. 324; 81 Me. 411; 83 Me. 523. *Damages.* 19 Me. 315; 45 Me. 424; 49 Me. 145; 52 Me. 27; 54 Me. 478; 60 Me. 540; 61 Me. 442; 63 Me. 28; 67 Me. 460, 464.

Their return, made at their next regular session after the hearing, shall be placed on file, and remain in the custody of their clerk for inspection without record. The case shall be continued to their next regular term, and at any time on or before the third day thereof, if no appeal from the location be taken, all persons aggrieved by their estimate of damages shall file their notice of appeal. If no such notice is then presented or pending, the proceedings shall be closed, recorded and become effectual; all claims for damages not allowed by them be forever barred; and all damages awarded under the first thirteen sections of this chapter, paid out of the county treasury. But if an appeal from the location be taken in accordance with section fifty-two, then notice of appeal on damages may be filed with the clerk of the county commissioners within sixty days after the final decision of the appellate court in favor of such way, has been certified to him, to the supreme judicial court first held in the county where the land is situated, more than thirty days after such notice of appeal is filed, which court shall determine the same in the same manner as is provided in section eight, when no appeal on location is taken. R. S. c. 23, § 5; 23 Me. 11; 25 Me. 304; 30 Me.

308; 59 Me. 391; 78 Me. 101, 169; 31 Me. 272; 32 Me. 568; 42 Me. 399; 59 Me. 391; 63 Me. 28; 83 Me. 522.

When a notice of appeal for increase of damages is presented within the time allowed, the case shall be further continued until a final decision respecting damages is made. If they then are of opinion that their proceedings, or any part thereof, ought not to take effect, subject to such damages as have been assessed, they shall enter a judgment that the prayer of the petitioners, or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county; or if of opinion that such increase of damages should prevent a confirmation of a part or parts only of their proceedings, they shall designate such part or parts, and enter judgment accordingly; and the whole proceedings shall be recorded and become effectual. But the provisions of this section shall not apply when a location has been determined by a committee of the supreme judicial court upon appeal from the decision of the county commissioners thereon. In such case proceedings regarding the location shall become effectual as if no appeal for increase of damages had been taken. R. S. c. 23, § 6; 63 Me. 29; 78 Me. 173.

If any person's property is damaged by laying out, altering or discontinuing a highway or town way, the county commissioners or the municipal officers of towns shall estimate the amount, and in their return state the share of each separately; damages shall be allowed to the owners of reversions, and remainders; and to tenants for life, and for years, in proportion to their interests in the estate taken; but said commissioners or officers shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located, has been entered upon and possession taken, for the purpose of construction or use. R. S. c. 23, § 7; 71 Me. 140; 84 Me. 54; 91 Me. 51; 93 Me. 127.

Any person aggrieved by the estimate of damages by the county commissioners, on account of the laying out or discontinuing of a way, may appeal therefrom, at any time before the third day of the regular term succeeding that at which the commissioners' return is made, to the term of the supreme judicial court, first held in the county where the land is situated, more than thirty days after the expiration of the time within which such appeal may be taken, excluding the first day of its session,

which court shall determine the same by a committee of reference if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto, and shall issue execution for the costs only. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the first term of the court shall file a complaint setting forth substantially the facts, upon which the case shall be tried like other cases. The clerk shall certify the final judgment of the court to the county commissioners, who shall enter the same of record, and order the damages therein recovered to be paid as provided in section seven. The party prevailing recovers costs to be taxed and allowed by the court, except that they shall not be recovered by the party claiming damages, but by the other party, if on such appeal by either party, said claimant fails to recover a greater sum as damages than was allowed to him by the commissioners. The compensation of the committee shall be the same as commissioners would have for like services, to be allowed by the court and paid from the county treasury upon the certificate of the clerk of courts. R. S. c. 23, § 8; 21 Me. 390; 77 Me. 181; 78 Me. 173; 83 Me. 535; 84 Me. 54; 89 Me. 313; 91 Me. 51; 96 Me. 249.

The owners of land taken shall be allowed not exceeding one year after the proceedings, regarding the location, are finally closed to take off timber, wood or any erection thereon. A time not exceeding two years shall be allowed for making and opening the way. R. S. c. 23, § 9; 8 Me. 137; 39 Me. 116; 64 Me. 409; 84 Me. 100.

When the way is discontinued before the time limited for the payment of damages, the commissioners may revoke their order of payment, and estimate the damages actually sustained, and order them paid. Any person aggrieved may have them assessed by a committee or jury, as herein provided. R. S. c. 23, § 10; 93 Me. 130.

When the true boundaries of highways or town ways duly located, or of which the location is lost, or which can only be established by user, are doubtful, uncertain or lost, the county commissioners of the county wherein such highway or town way is located, upon petition of the municipal officers of the town wherein the same lies, shall, after such notice thereon as is required for the location of new ways, proceed to hear the parties, examine said highway or town way, locate and define its limits

and boundaries by placing stakes on side lines at all apparent intersecting property lines, and at intervals of not more than one hundred feet and cause durable monuments to be erected at the angles thereof, make a correct return of their doings, signed by them, accompanied by an accurate plan of the way, and if any real estate is damaged by said action, shall award damages to the owner as in laying out new highways, in the case of highways to be paid by the county and in the case of town ways to be paid by the town. Said municipal officers shall maintain all highway or town way monuments, and replace them forthwith when destroyed. If any appeal for increase of damages is taken, and the commissioners are of opinion that their proceedings hereunder, or any part thereof, ought not to take effect, they shall enter a judgment that the prayer of the original petitioners or any part thereof, designating what part is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county. R. S. c. 23, § 11; 83 Me. 42.

When a petition is presented respecting a way in two or more counties, the commissioners receiving the petition being satisfied as aforesaid, may call a meeting of the commissioners of all the counties, to be held at a time and place named, by causing an attested copy of such petition and of their order thereon, to be served upon their chairman; and they shall give notice of such meeting by causing a like copy to be published in the state paper and in one paper, if any, printed in every such county, and by posting it in three public places in each town interested, and serving it on the clerk thereof. These notices shall be posted, served and published thirty days before the time of meeting. R. S. c. 23, § 12; 52 Me. 213; 65 Me. 214.

Each county must be represented at such meeting by a majority of its commissioners. A majority of those present may decide upon the whole matter. The duty of carrying that judgment into effect, shall be performed in each county by its own commissioners in the manner respecting ways wholly within it. When each county is not so represented, those present may adjourn the meeting to another time. R. S. c. 23, § 13; 25 Me. 292; 45 Me. 424; 52 Me. 213; 73 Me. 57.

When proceedings have been had by the county commissioners on a petition for laying out, altering, grading or discontinuing a way in two or more counties, an appeal may be taken in the manner provided in case of a way wholly in one county. R. S. c. 23, § 14.

When an appeal is so taken, it shall be filed with the commissioners of, and subsequent proceeding shall be had in, the county where proceedings originated and the commissioners with whom such appeal is filed shall immediately give notice of such appeal to the commissioners of all the counties interested, and the clerk of courts shall certify the final judgment of court to the commissioners of all said counties. R. S. c. 23, § 15; 86 Me. 142.

When a town way, private way or highway, is wholly or partly discontinued by the commissioners, a time shall be fixed for it. And when laid out by them the way shall be regarded as discontinued, if not opened within six years from the time allowed therefor. When town or private ways are finally located by municipal officers, unless the land is entered upon and possession taken for said purpose within two years after the laying out or alteration, the proceedings are void. R. S. c. 23, § 38; 12 Me. 237; 43 Me. 428; 59 Me. 543; 71 Me. 240; 79 Me. 273; 91 Me. 138; 95 Me. 51.

When a town way or highway is not opened and made passable by the town liable, or a hill therein has not been graded, within the time prescribed therefor by the commissioners, they may, after notice to the town, cause it to be done by an agent, not one of themselves, on petition of those interested. The agent shall make a written contract therefor and file a copy of it in the clerk's office; and the commissioners shall forthwith certify to the assessors of the town interested, the time when such contract is to be completed, and the amount to be paid therefor. They may examine the doings of their agent, and at pleasure remove him and appoint another. His account shall not be allowed without notice to the town. When the contract has been completed and the accounts allowed, the town shall pay the amount expended, with the expenses of the agent for superintendence, and for procuring the allowance of his account. If the town neglects to pay for thirty days, a warrant of distress shall be issued by the commissioners to collect the same. R. S. c. 23, § 39; 25 Me. 303; 37 Me. 120, 555; 49 Me. 145; 59 Me. 84; 64 Me. 331; 71 Me. 240; 80 Me. 429; 83 Me. 115.

When a highway is laid out through a town and an agent appointed by the county commissioners to open and make it, and the record location thereof cannot be found on the face of the earth or consistently applied thereto, or said agent is not making said highway according to the record location, the municipal officers or town agent, may file a bill in equity in the supreme judicial court, setting forth the facts aforesaid and

praying an injunction to stay the proceedings of said road agent; and any justice of said court shall issue a summary notice to said road agent to appear before him to answer said petition; and on a hearing of the parties may issue a temporary injunction upon such terms and conditions as he deems reasonable; and subsequent proceedings on the bill shall be similar to proceedings in equity in other cases. R. S. c. 23, § 40.

Plantations organized under section one hundred and fourteen of chapter four of the revised statutes have like powers and are subject to like liabilities and penalties as towns respecting ways. Their assessors have like powers and shall perform like duties, as municipal officers of towns, respecting them. R. S. c. 23, § 41; 20 Me. 298.

A person entitled to receive payment of damages or costs, may, after thirty days from demand on the treasurer of the county, or town, or on the party liable therefor, recover them in an action of debt. R. S. c. 23, § 42; 45 Me. 429; 83 Me. 246; 93 Me. 231.

The county commissioners, on petition as provided in section one, may lay out, alter or discontinue a highway on any tract of land in their county, not within any town or plantation required to raise money to make and repair highways; and all expenses for making and opening the same shall be paid by the owners thereof, excluding lands reserved for public uses, in proportion to their interest in the lands over any part of which it is laid, except as provided in chapter nine, section fifty-six. R. S. c. 23, § 43; 3 Me. 133; 17 Me. 197; 27 Me. 294; 30 Me. 352; 33 Me. 458; 38 Me. 495; 46 Me. 346; 60 Me. 289; 63 Me. 255; 80 Me. 285; 83 Me. 517.

If they think that there ought to be a hearing, they shall cause notice to be given of the time and place appointed therefor, by service of an attested copy of the petition with their order thereon, upon the owners of such lands, if known, fourteen days before that time, and if unknown, by a publication thereof in the state paper for six successive weeks, the last, thirty days before that time. No proceedings shall take place until it is proved that such notice has been given. R. S. c. 23, § 44; 38 Me. 495.

After hearing the parties at the time and place appointed, they may proceed as provided in section four. R. S. c. 23, § 45.

Any party interested in such decision may appeal therefrom to the supreme judicial court, to be entered at the term thereof first held after such decision, in said county. And all further

proceedings before the commissioners shall be stayed until a decision is made in the appellate court. If no person appears at that term to prosecute the appeal, the judgment of the commissioners shall be affirmed. If the appeal is then entered, not afterwards, the court may appoint a committee of three disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court shall appoint another in his place, and they shall cause notice to be given of the time and place of hearing before them, by publication thereof in the state paper for six successive weeks, the last publication to be fourteen days, at least, before the day of hearing, and personal notice to the appellant and to the chairman of the county commissioners, thirty days, at least, before the time set for hearing; they shall view the route, hear the parties, and make their report at the next or second term of the court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed, or reversed, which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners. If the judgment of the commissioners in favor of laying out, grading or altering a way as prayed for, is wholly reversed on appeal, the commissioners shall proceed no further. If their judgment is affirmed in whole, or in part, they shall carry into effect the judgment of the appellate court; and in all cases, they shall carry into full effect the judgment of the appellate court, in the same manner as if made by themselves; and the party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party, to be paid out of the county treasury. The compensation of the committee shall be the same as commissioners would have for like services, to be allowed by the court. The costs allowed to the prevailing party, and the fees of the committee shall be collected as provided in section three. R. S. c. 23, § 46; 59 Me. 514; 63 Me. 570; 64 Me. 31; 72 Me. 248; 80 Me. 285; 91 Me. 103.

If the final decision of the commissioners or of the committee is against the prayer of the petition, no new petition for the same road shall be entertained by the commissioners for one year thereafter. R. S. c. 23, § 47; 78 Me. 537.

County commissioners in their counties may, upon the same petition, lay out, alter or discontinue highways, through a town or towns or a plantation or plantations, and tracts of land not in any town or plantation, and in respect to that part of the

highway situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue highways leading from town to town; and in respect to that part of the highway not situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue a highway in places not incorporated. The time and place of hearing upon such petition shall be according to section forty-four; in case of an appeal to the supreme judicial court, the appeal may be made at any time after the return of the commissioners has been placed on the files, and before the next term of said court in the county; and the proceedings upon the appeal shall be according to section forty-six. If no appeal is made, the case shall be continued to the next regular term after the regular term to which the return is made. R. S. c. 23, § 48.

When it is necessary for any person or persons, by themselves, men or teams, to cross or enter upon any tract of land outside of the thickly settled portion of any town, for the purpose of hauling supplies, wood, bark, logs or lumber, or to yard or land the same, such person or persons shall not be liable in an action of trespass therefor, *provided*, the bond is furnished as provided in the following section, but the person or persons carrying on said lumbering operation, shall be liable for all the actual damage done to said land by said men and teams so crossing said land. R. S. c. 23, § 49.

Should the person or persons carrying on said lumbering operation, and the owners of said land, be unable to agree upon said damages, such person or persons before crossing, or entering upon said land for the purposes aforesaid, as provided by the preceding section, shall give bond to the owners of said land with sufficient sureties, and in such sum as the county commissioners in the county in which said land lies, shall determine and approve, conditioned to pay such sum as said owners of said land may recover as damages and costs as provided by section fifty-one. In case all or a part of the owners of said land are unknown, the county commissioners shall before fixing the amount of the bond, appoint a time and place for hearing thereon, and give notice thereof by publication in the county paper two successive weeks, the last publication to be seven days

before said hearing, and in such case the bond shall be given to the treasurer of the county for the use and benefit of all the owners in proportion to their respective rights in the land. R. S. c. 23, § 50.

Should the person or persons carrying on said lumbering operation, and the owners of said land be unable to agree upon said damages, either party may, within twelve months from the time said bond is approved, apply to the county commissioners of the county in which said land lies and cause said damages to be ascertained and determined in the same manner and under the same conditions and restrictions as are prescribed by law in the laying out of railroads. Failure to apply for damages within said one year shall be held to be a waiver of the same. The person or persons liable for said damages may make a tender to any land owner damaged under the provisions of the two preceding sections, and if such land owner recovers more damages than the amount tendered him for such, he shall recover costs and the expenses of the county commissioners; otherwise the person or persons liable for said damages shall recover costs and such expenses. A tender made to any person who owns an undivided interest in land thus damaged shall be sufficient under this section. R. S. c. 23, § 51.

Parties interested may appear jointly or severally, at the time of hearing, before the commissioners, on a petition for laying out, altering, grading or discontinuing a highway; and any such party may appeal from their decision thereon, at any time after it has been placed on file, and before the next term of the supreme judicial court in said county, at which term such appeal may be entered and prosecuted by him, or by any other party who so appeared. And all further proceedings before the commissioners shall be stayed until a decision is made in the appellate court. R. S. c. 23, § 52; 32 Me. 454; 42 Me. 400; 51 Me. 194, 385; 63 Me. 29, 570; 64 Me. 435, 437, 586; 68 Me. 407; 78 Me. 172, 538; 81 Me. 259; 83 Me. 437; 91 Me. 51.

If no person appears at that term to prosecute the appeal, the judgment of the commissioners may be affirmed. If the appeal is then entered, not afterwards, the court may appoint a committee of three disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court may appoint some suitable person in his place, and they shall give such notice as the court has ordered, view the route, hear the parties, and make their report at the next or second term of the

court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed; which being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners. R. S. c. 23, § 53; 8 Me. 146; 11 Me. 473; 31 Me. 447; 32 Me. 454; 33 Me. 370; 37 Me. 448; 42 Me. 400; 53 Me. 387, 434; 56 Me. 262; 59 Me. 263, 514; 63 Me. 111; 64 Me. 586; 67 Me. 531; 81 Me. 259; 83 Me. 435; 86 Me. 185.

If the judgment of the commissioners in favor of laying out, grading or altering a way, as prayed for, is wholly reversed on appeal, they shall proceed no further; and in all cases when the judgment of the commissioners is reversed on appeal, no petition praying, substantially, for the same thing shall be entertained by them for two years thereafter. If their judgment is affirmed in whole or in part, they shall carry into effect the judgment of the appellate court; and in all cases they shall carry into full effect the judgment of the appellate court in the same manner as if made by themselves; and the party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party, to be paid out of the county treasury. The compensation of the committee shall be the same as commissioners would have for like services, to be allowed by the court. The costs allowed the prevailing party, and the fees of the committee, shall be collected as provided in section three; *provided, however*, that this section shall not apply to any case where the judgment has been reversed on account of informality in the proceedings. R. S. c. 23, § 54; 32 Me. 473; 42 Me. 401; 53 Me. 86; 59 Me. 451; 67 Me. 531; 68 Me. 485; 80 Me. 428; 83 Me. 435; 91 Me. 51.

All such committees, whether agreed on or appointed on appeal from the county commissioners, may be sworn at any time before viewing the route and hearing the parties. R. S. c. 23, § 55; 83 Me. 435.

Highways, town ways and streets, legally established, shall be opened and kept in repair so as to be safe and convenient for travelers with horses, teams and carriages. In default thereof, those liable may be indicted, convicted and a reasonable fine imposed therefor. R. S. c. 23, § 56. *Ways not established by statute provisions.* 2 Me. 60; 3 Me. 273; 4 Me. 272; 5 Me. 368; 11 Me. 280; 18 Me. 68, 412; 21 Me. 174; 25 Me. 299; 35 Me. 104, 169; 37 Me. 70; 40 Me. 155; 42 Me. 23; 46 Me.

427; 47 Me. 344; 48 Me. 457; 51 Me. 260; 54 Me. 364; 56 Me. 348; 73 Me. 54. *Ways presumed to be legally established.* 34 Me. 245; 37 Me. 55, 507; 39 Me. 300. *Liability for repair.* 5 Me. 256; 15 Me. 407; 16 Me. 189; 18 Me. 287; 35 Me. 104; 36 Me. 397; 37 Me. 251; 38 Me. 221; 46 Me. 485; 51 Me. 128, 131, 533; 57 Me. 533, 536; 62 Me. 105, 470, 472; 63 Me. 477, 550-1; 64 Me. 60; 65 Me. 37, 286, 515, 550; 68 Me. 153, 360; 69 Me. 197; 82 Me. 276; 84 Me. 23; 85 Me. 281. *Traveler and negligence.* 62 Me. 470, 472; 67 Me. 168; 70 Me. 306.

When a town liable to maintain a way, unreasonably neglects to keep it in repair, as aforesaid, after one of the municipal officers has had five days' actual notice or knowledge of the defective condition, any three or more responsible persons may petition the county commissioners for the county, setting forth such facts, who, if satisfied that such petitioners are responsible for the costs of the proceedings, shall fix a time and place near such defective way, for a hearing on such petition, and cause such notice thereof to be given to the town and petitioners as they may prescribe. At the time appointed, the commissioners shall view the way, alleged to be out of repair, and hear the parties interested, and if they adjudge the way to be unsafe and inconvenient for travelers, horses, teams and carriages, they shall prescribe what repairs shall be made, fix the time in which the town shall make them, give notice thereof to the municipal officers and award the costs of the proceedings against the town. If they adjudge the way to be safe and convenient, they shall dismiss the petition and award the costs against the petitioners. If they find that the way was defective at the time of presentation of the petition, but has been repaired before the hearing, they may award the costs against the town, if in their judgment justice requires it. R. S. c. 23, § 57; 90 Me. 483.

Such petition may be presented to said commissioners at any of their sessions, or in vacation to their chairman, who shall procure the concurrence of his associates in fixing the time and place in the order of notice, and cause the petition to be entered at their next session. And they shall make full return of their proceedings on the petition, and cause the same to be recorded as of their next regular term after the proceedings are closed. R. S. c. 23, § 58.

If the town neglects to make the repairs prescribed by the commissioners, within the time fixed therefor in such notice to the town, they may cause it to be done by an agent, not one of

themselves. Such agent shall cause the repairs to be made forthwith, and shall render to the commissioners his account of disbursements and services in making the same. His account shall not be allowed without such notice to the town, as the commissioners deem reasonable. When the account is allowed, the town becomes liable therefor, with the agent's expenses in procuring the allowance of his account, and interest after such allowance, and said commissioners shall render judgment therefor against the town in favor of the agent. If a town neglects to pay said judgment for thirty days after demand, a warrant of distress shall be issued by the commissioners to collect the same. R. S. c. 23, § 59.

When a way is established on a line between towns, their municipal officers shall divide it crosswise, and assign to each town its proportion thereof by metes and bounds, which, within one year thereafter, being accepted by each town, at a legal meeting, shall render each town liable, in the same manner as if the way were wholly within the town; when a division of it is not so made, the selectmen of either town may petition the county commissioners, who shall give notice by causing a copy of such application with their order thereon appointing a time and place of hearing, to be served upon the clerk of each town thirty days, or by causing it to be published in some newspaper printed in the county for three weeks, previous to the time appointed; and after hearing the parties, they may make such division. R. S. c. 23, § 60; 52 Me. 214; 74 Me. 201.

A highway may be laid out on the line between towns, part of its width being in each, and the commissioners may then make such division of it and enter the same of record, and each town shall be liable in all respects, as if the way assigned to it were wholly in the town. R. S. c. 23, § 61; 52 Me. 214.

CHAPTER XXXVII.

POWER OF COUNTY COMMISSIONERS RELATING TO
TOWN WAYS.

When the municipal officers unreasonably neglect or refuse to lay out or alter a town way, or a private way on petition of an inhabitant, or of an owner of land therein for a way leading from such land under improvement to a town or highway, the petitioner may, within one year thereafter, present a petition stating the facts to the commissioners of the county at a regular session, who shall give notice thereof to all interested and act thereon as is provided respecting highways. When the decision of the municipal officers is in favor of such laying out or alteration any owner or tenant of the land over or across which such way has been located, shall have the same right of petition.

When the decision of the commissioners is returned and placed on file, such owner or tenant, or other party interested, has the same right to appeal to the supreme judicial court as is provided in sections fifty-two to fifty-five, inclusive, of chapter twenty-three of the revised statutes; and also to have his damages estimated as provided in section eight of chapter twenty-three. R. S. c. 23, § 21.

No such way shall be opened or used until after sixty days from its acceptance by the town, and if within that time notice of such appeal or petition is filed with the town clerk, such way shall not be opened or used until finally located by the appellate tribunal. R. S. c. 23, § 22.

An appeal vacates the location by the county commissioners, and arrests all further proceedings thereunder, until the final adjudication by the supreme judicial court. Until then the land cannot be entered upon, nor any right to damages accrue to its owner. 91 Me. 51.

When a town unreasonably refuses to discontinue a town or private way, or to accept one laid out or altered by the selectmen, the parties aggrieved may, within the time, and in the

manner provided in section twenty-one of chapter twenty-three of the revised statutes, present a petition to the commissioners, who shall in like manner proceed and act thereon, and cause their proceedings to be recorded by their own and by the town clerk; and the rights of all parties may be preserved and determined as provided in that section and section twenty-two. R. S. c. 23, § 23.

Form of Petition to Commissioners, when the Town Refuses to Lay out a Town Way.

To the honorable, the court of county commissioners for the county of _____, next to be holden in said county of _____, at _____, on the _____ day of _____, 19—:

Humbly shows — that a town way from — to —, in such town, would be of great public convenience; that the selectmen of said town, after notice and hearing of the parties, have laid out such way, and reported the same to the town, at a public meeting of the inhabitants duly notified and warned; yet the town has unreasonably refused to allow and approve said town way laid out by the selectmen aforesaid, and to put the same on record; wherefore your petitioner, considering himself aggrieved by such delay and refusal, prays that your honors may, agreeably to law in such case made and provided, accept and approve said town way, and direct the same to be duly recorded.

Dated at —, A. D. 19—.

W. M.

When a town way has been laid out, graded or altered by the commissioners, their proceedings cannot be affected by any action of the town, within five years; and when one has been discontinued by them, it cannot be again laid out by the town, within two years. The commissioners have the same power to alter or discontinue such ways, for five years, as they have respecting highways. R. S. c. 23, § 24.

The county commissioners, in laying out new ways, or altering or grading ways already laid out, may direct the amount of such grading, which shall be stated in their return; and they may order a portion of the expense of such altering or grading, not exceeding fifty per cent thereof, to be paid to the town in which the altering or grading has been done, from the county treasury. R. S. c. 23, § 25.

When a town has accepted a town way, and said town way is subsequently discontinued by the county commissioners on appeal, before such road has been opened for travel, such town may, at its annual meeting, held within three years thereafter,

by a majority of the voters present and voting, reinstate and lay out such town way, under an article for such purpose in the warrant. The damages shall be assessed, and the owners of the land over which said way passes shall be notified thereof by the municipal officers, within twenty days after said meeting; and any person aggrieved by the estimate of damages may have them determined in the manner provided in section twenty of chapter twenty-three of the revised statutes in case of town ways laid out on petition. A town way so reestablished and laid out shall not be discontinued for five years thereafter. R. S. c. 23, § 26.

No private way, town way, city street, or highway, taking land of any railroad corporation, shall be located, unless a notice of the time and place of the hearing upon said location has been served upon the station agent of said railroad within such town or city, if any, otherwise upon such agent whose station is nearest to the land proposed to be so taken, at least seven days before the time for such hearing. R. S. c. 23, § 28.

Town ways and highways may be laid out across, over or under any railroad track, in the same manner as other town ways and highways, except that before such way shall be constructed, the railroad commissioners, on application of the municipal officers of the city or town wherein such way is located, or of the parties owning or operating the railroad, shall, upon notice and hearing, determine whether the way shall be permitted to cross such track at grade therewith or not, and the manner and conditions of crossing the same and the expense of building and maintaining so much thereof as is within the limits of such railroad shall be borne by such railroad company, or by the city or town in which such way is located, or shall be apportioned between such company and city or town, as may be determined by said railroad commissioners. Said commissioners shall make a report in writing of their decision thereupon, file the same in their office and cause to be sent by mail or otherwise to each of the railroad corporations, and the municipal officers of the city or town as the case may be, interested therein, a copy of such decision. Such decision shall be final and binding upon all parties unless an appeal therefrom shall be taken and entered at the next succeeding term of the supreme judicial court, to be held in the county where the crossing is located, more than thirty days after the date of the filing of the report. The appellant shall within fourteen days from the date of the filing of such report, file in the office of the board of railroad commissioners, its reasons for

appeal and fourteen days at least before the sitting of the appellate court, it shall cause to be served upon such other interested corporations or municipality a copy of such reasons for appeal, certified by the clerk of the board of railroad commissioners. The presiding justice, at such term of court, shall make such order or decree thereon as law and justice may require. Exceptions may be taken to such order or decree. The final adjudication shall be recorded as provided in section thirty-two of this chapter. Costs may be taxed and allowed to either party at the discretion of the court. R. S. c. 23, § 29.

In case of such ways already so laid out, over or under any railroad track, and not at grade, the expense of building and maintaining so much thereof as is within the limits of such railroad, shall be borne as provided in the preceding section; the question shall be determined upon application of any company whose track is so crossed, made within sixty days after written notice has been served thereon by the municipal officers of any town in which such way is located, requesting such company to build and maintain so much of such way as is within the limits of its road. R. S. c. 23, § 30.

No way shall be laid out through or across any land or right of way of any railroad corporation, used for station purposes, unless after notice and hearing the railroad commissioners adjudge that public convenience and necessity require it. When the tribunal having jurisdiction over the laying out of such way is satisfied, after hearing, that public convenience and necessity requires such laying out, such proceedings shall be suspended and petition filed by such tribunal with the railroad commissioners for their adjudication thereunder. R. S. c. 23, § 31.

Adjudications of the railroad commissioners relating to ways shall be recorded in the office in which the location of the way must be recorded. R. S. c. 23, § 32.

Railroads may cross highways or town ways in the line of the railroad, but cannot pass along them without leave of the town, but when a railroad is hereafter laid out across a highway or other public way, it shall be constructed so as to pass either over or under such way, unless the railroad commissioners after notice and hearing authorize a crossing at grade. Before entering upon the construction of any railroad, the manner and conditions of crossing shall be determined as provided by section twenty-nine of chapter twenty-three as amended. But no crossing of a street in a city, not a highway, shall be made without

the written consent of the mayor and aldermen. Crossings not so made are nuisances, and may be so treated, and the directors of railroad corporations making them are personally liable. R. S. c. 51, § 65.

Highways and other ways may be raised or lowered, or the course of the same may be altered to facilitate a crossing or to permit a railroad to pass over or under the same or at the side thereof, on application to the railroad commissioners, and proceedings as provided by section twenty-nine of chapter twenty-three; and for such purposes land may be taken and damages awarded as provided for laying out highways and other ways. The railroad commissioners may prescribe the manner in which the work shall be done by the corporation. While the use of any way is thereby obstructed, a temporary way shall be provided by the corporation. R. S. c. 51, § 66; 38 Me. 30; 87 Me. 253.

When a railroad corporation construct their road to pass over or under the highway, they are bound to exercise that right so as not unnecessarily to injure others. The work must be done in such a manner that the road shall not be unnecessarily obstructed and reasonable care should be used by the erection of barriers and otherwise, to warn and protect the citizens from danger and injury. 49 Me. 121.

When a town way or highway is not opened and made passable by the town liable, or a hill therein has not been graded, within the time prescribed therefor by the commissioners, they may, after notice to the town, cause it to be done by an agent, not one of themselves, on petition of those interested. The agent shall make a written contract therefor and file a copy of it in the clerk's office; and the commissioners shall forthwith certify to the assessors of the town interested, the time when such contract is to be completed, and the amount to be paid therefor. They may examine the doings of their agent, and at pleasure remove him and appoint another. His account shall not be allowed without notice to the town. When the contract has been completed and the accounts allowed, the town shall pay the amount expended, with the expenses of the agent for superintendence, and for procuring the allowance of his account. If the town neglects to pay for thirty days, a warrant of distress shall be issued by the commissioners to collect the same. R. S. c. 23, § 39.

When a highway is laid out through a town and an agent appointed by the county commissioners to open and make it,

and the record location thereof cannot be found on the face of the earth or consistently applied thereto, or said agent is not making said highway according to the record location, the municipal officers or town agent, may file a bill in equity in the supreme judicial court setting forth the facts aforesaid and praying an injunction to stay the proceedings of said road agent; and any justice of said court shall issue a summary notice to said road agent to appear before him to answer said petition; and on a hearing of the parties may issue a temporary injunction upon such terms and conditions as he deems reasonable; and subsequent proceedings on the bill shall be similar to proceedings in equity in other cases. R. S. c. 23, § 40.

Plantations organized under section one hundred and fourteen of chapter four of the revised statutes have like powers and are subject to like liabilities and penalties as towns respecting ways. Their assessors have like powers and shall perform like duties, as municipal officers of towns, respecting them. R. S. c. 23, § 41.

Any railroad company may, in accordance with the provisions of this act, establish and maintain temporary crossings of any railroad operated by it, for the purpose of accommodating lumbering operations, by agreement with any person who may request such crossing for lumbering purposes, and upon petition to the railroad commissioners, after notice and hearing, said commissioners, may direct any railroad company to establish and maintain such temporary crossings and at such places on its line of road as said commissioners shall deem expedient, and thereupon said railroad company shall establish such crossing and maintain the same in accordance with the provisions of this act. P. L. 1909, c. 22, § 1.

At every temporary crossing, established in accordance with section one of this act, boards with the words, "temporary railroad crossing, stop, look, listen," distinctly painted thereon on each side, in letters plainly legible, shall be placed on each side line of the railroad right of way at such crossing, on a post or other structure in such position as to be easily seen by persons about to cross the railroad at such places. P. L. 1909 c. 22, § 2.

For any such crossing, so established, engine bells shall be rung and engine whistles sounded, as provided in section seventy of chapter fifty-one, of the revised statutes. P. L. 1909 c. 22, § 3.

No team shall be driven over any such crossing unless such team shall first be stopped at the line of the railroad right of way and the driver thereof shall first look and listen, and such driver or some other person for him shall first go upon such crossing, ahead of such team, and be satisfied that such team may safely be driven over such crossing. Nothing in this section shall prevent the railroad commissioners from making such further regulations for safety at any such crossing established under their direction, as they may deem expedient or necessary. P. L. 1909 c. 22, § 4.

Each such crossing shall be kept open only during such time each year as the parties interested therein may agree upon, or as the railroad commissioners may specify in cases where the railroad commissioners direct such crossings to be established. When the railroad commissioners shall direct any such temporary crossing to be established they shall determine who shall bear the expense of establishing and maintaining such crossing, and furnishing and erecting such signboards, and they may, if they see fit, apportion such expense between the railroad company and the person or persons who shall have petitioned for such crossing. The expense of the crossing signs and the planking between the rails shall, however, in any event be borne by the railroad company. P. L. 1909 c. 22, § 5.

CHAPTER XXXVIII.

LIABILITY OF TOWNS TO REPAIR HIGHWAYS, ETC.

Highways, town ways, and streets, legally established, shall be opened and kept in repair so as to be safe and convenient for travelers with horses, teams, and carriages. In default thereof, those liable may be indicted, convicted and a reasonable fine imposed therefor. R. S. c. 23, § 56. For proceedings before county commissioners to compel town to repair, see R. S. c. 23, §§ 57, 58 and 59.

Proceedings in case of such fine being imposed, see R. S. c. 23, §§ 83 and 85.

When a way is established on a line between towns their municipal officers shall divide it crosswise, and assign to each town its proportion thereof by metes and bounds, which, within one year thereafter, being accepted by each town, at a legal meeting, shall render each town liable in the same manner as if the way were wholly within the town; when a division of it is not so made, the selectmen of either town may petition the county commissioners, who shall give notice by causing a copy of such application, with their order thereon, appointing a time and place of hearing, to be served upon the clerk of each town thirty days, or by causing it to be published in some newspaper printed in the county for three weeks previous to the time appointed; and after hearing the parties, they may make such division. R. S. c. 23, § 60.

A highway may be laid out on the line between towns, part of its width being in each, and the commissioners may then make such division of it and enter the same of record, and each town shall be liable in all respects as if the way assigned to it were wholly in the town. R. S. c. 23, § 61.

Towns may authorize their road commissioners or other persons to make contracts for opening or repairing their ways. R. S. c. 23, § 75.

Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes, by a road commissioner or commissioners, or by the selectmen as the town may determine. R. S. c. 23, § 70.

A town at its annual meeting, may authorize its assessors to abate not exceeding three dollars of the highway tax of any person, upon proof that he has owned and used on the ways during that year cart wheels having felloes not less than six inches wide. And they shall abate three dollars from the tax of any inhabitant, who shall construct, and during the year keep in repair a watering trough beside the highway, well supplied with water, the surface of which shall be two and a half feet or more above the level of the ground, and easily accessible for horses and carriages, if the assessors think such watering trough for the public convenience. If more than one person in the same locality claims to furnish it, the municipal officers shall decide where it shall be located. Such officers may establish and maintain such public drinking troughs, wells and fountains within

the public highways, squares and commons of their respective towns, as in their judgment the public necessity and convenience require; and towns may raise and appropriate money to defray the expense thereof. R. S. c. 23, § 74.

Whoever receives any bodily injury, or suffers damage in his property, through any defect or want of repair or sufficient railing, in any highway, town way, causeway or bridge, may recover for the same in a special action on the case, to be commenced within one year from the date of receiving such injury, or suffering damage, of the county or town obliged by law to repair the same, if the commissioners of such county, or the municipal officers or road commssioners of such town, or any person authorized by any commissioner of such county or any municipal officer, or road commissioner of such town, to act as a substitute for either of them, had twenty-four hours' actual notice of the defect or want of repair; but not exceeding two thousand dollars in case of a town; and if the sufferer had notice of the condition of such way previous to the time of the injury, he cannot recover of a town unless he has previously notified one of the municipal officers of the defective condition of such way; and any person who sustains injury or damage, as aforesaid, or some person in his behalf, shall within fourteen days thereafter, notify one of the county commissioners of such county, or of the municipal officers of such town, by letter or otherwise, in writing, setting forth his claim for damages and specifying the nature of his injuries and the nature and location of the defect which caused such injury. If the life of any person is lost through such deficiency, his executors or administrators may recover of such county or town liable to keep the same in repair, in an action on the case, brought for the benefit of the estate of the deceased, such sum as the jury may deem reasonable as damages, if the parties liable had said notice of the deficiency which caused the loss of life; at the trial of any such action the court may, on motion of either party, order a view of the premises where the defect or want of repair is alleged, when it would materially aid in a clear understanding of the case. R. S. c. 23, § 76. *When and how ways should be constructed.* 18 Me. 288; 26 Me. 240; 33 Me. 460; 39 Me. 115; 46 Me. 485. *Defective ways.* 11 Me. 273; 14 Me. 200, 203; 16 Me. 189; 17 Me. 201; 18 Me. 287; 26 Me. 239; 32 Me. 49; 35 Me. 104; 36 Me. 398; 37 Me. 251; 39 Me. 115; 42 Me. 253, 526; 46 Me. 485; 51 Me. 186, 314, 533; 55 Me. 48; 56 Me. 17; 62 Me. 470; 64 Me. 60, 62; 65 Me. 285; 66 Me. 348, 402; 68

Me. 366; 69 Me. 73; 72 Me. 250, 540; 74 Me. 536; 76 Me. 427; 82 Me. 437; 87 Me. 265; 90 Me. 487; 91 Me. 566; 94 Me. 165; 95 Me. 374. *Damage.* 14 Me. 205; 16 Me. 191; 20 Me. 248; 29 Me. 311; 31 Me. 301; 32 Me. 273, 538; 33 Me. 272; 41 Me. 533; 50 Me. 223; 51 Me. 440; 61 Me. 203; 82 Me. 438. *Defect sole cause of damage.* 18 Me. 288; 20 Me. 50; 32 Me. 50, 576; 38 Me. 206, 445; 42 Me. 335, 347; 43 Me. 496; 51 Me. 127; 61 Me. 572; 64 Me. 53; 65 Me. 550; 66 Me. 402; 68 Me. 154; 69 Me. 73; 74 Me. 533; 97 Me. 519. *Due care.* 11 Me. 337; 14 Me. 200; 18 Me. 288, 381; 21 Me. 31; 26 Me. 240; 31 Me. 301; 32 Me. 54, 576; 38 Me. 207, 445; 42 Me. 336; 43 Me. 496; 50 Me. 224; 64 Me. 544; 65 Me. 285; 70 Me. 306; 72 Me. 541; 77 Me. 44; 78 Me. 200; 81 Me. 188; 82 Me. 438; 84 Me. 334; 97 Me. 519. *Notice of defects.* 7 Me. 445; 21 Me. 31; 23 Me. 558; 32 Me. 272; 42 Me. 203; 51 Me. 533; 56 Me. 17; 68 Me. 360, 513; 69 Me. 74; 70 Me. 123; 72 Me. 252; 74 Me. 147, 533; 75 Me. 559; 77 Me. 384; 80 Me. 598; 82 Me. 65, 75, 437; 84 Me. 147; 87 Me. 188, 231, 528; 88 Me. 297, 467; 90 Me. 131, 213, 487; 93 Me. 361; 94 Me. 268; 96 Me. 320. *Notice of claim.* 64 Me. 134; 66 Me. 333, 454, 549; 68 Me. 513; 69 Me. 196; 70 Me. 124; 73 Me. 486; 75 Me. 81, 115; 83 Me. 428; 84 Me. 278, 577; 87 Me. 231; 88 Me. 474; 94 Me. 234.

It is not required that a highway, in its whole width as located, should be fitted for travel. It is enough if there be a wrought road in good condition and of suitable width for all the needs of the public. 69 Me. 72; 82 Me. 273; 85 Me. 523.

Where the bridge on which the plaintiff was injured has been used as a toll bridge before a public way was located over it, and it had been properly constructed for public travel and was a connecting link between two highways, and no time was prescribed in which the way should be open, it was *Held*, that the way should be opened in a reasonable time and if permitted to be used by the public after its location, and for nearly a year prior to the injury, the town became liable to keep it safe and convenient, and consequently liable in damages. 69 Me. 194.

When the center of a road is the divisional line between two towns, and no crosswise division has been made in pursuance of the provisions of the revised statutes, each town is liable for defects occurring out of its limits, and is bound to repair them. 74 Me. 198.

Towns so situated cannot be jointly indicted, and neither town

is to be held liable for defects arising from the neglect of the other. Ib.

In determining the question whether a way is safe and convenient, within the meaning of the statute, it is enough that the way is safe and convenient in view of such casualties as might reasonably be expected to happen to travelers. The law has not prescribed what imperfections in a way will be considered as constituting a defect or want of repair, so as to render a town liable, if an injury is occasioned thereby. These are questions of fact, generally, for the jury to settle, under proper instructions. 77 Me. 44.

The duty of towns is fully performed when they have repaired carriage ways of sufficient width to make them reasonably safe and reasonably convenient for travelers to drive over them with reasonable care and action. Where one intentionally and heedlessly and unnecessarily drives out of the wrought part of a road he must do so at his own risk. 85 Me. 523; 88 Me. 104.

When on trial of any such action or indictment, it appears that the defendant county or town has, within six years before the injury, made repairs on the way or bridge, it shall not deny the location of such way or bridge. R. S. c. 23, § 77; 5 Me. 368; 12 Me. 237; 51 Me. 187; 54 Me. 94; 58 Me. 349; 66 Me. 349.

No town is liable for such an injury when the weight of the load, exclusive of the carriage, exceeds six tons. Proof of its weight must be made by the plaintiff. R. S. c. 23, § 78.

No town is liable to an action for damages to any person on foot, on account of snow or ice, on any sidewalk or cross-walk, nor on account of the slippery condition of any sidewalk or cross-walk. R. S. c. 23, § 79.

When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down, as will render them passable. The town may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall, without delay, cause them to be repaired. And all damage accruing to a person in his business or property, through neglect of such road commissioner or the municipal officers of such town, to so render passable, ways that are blocked or encumbered with snow, within a reasonable time, may be recovered of such town by a special action on the case. R. S. c. 23, § 62; 96 Me. 133.

In an action against a town for damages alleged to have occurred by reason of a defect in a railroad crossing, constituting part of a highway which said town is obliged to keep in repair, the railroad company owning or occupying such crossing, may be notified of the pendency of the suit, and take upon itself the defence of the same. R. S. c. 23, § 80.

In such trial, after notice as provided in the preceding section, if the plaintiff recovers, and the jury finds specially that the damage was occasioned by the fault of such company, it shall be liable to the defendants in said suit in an action of debt for all damage and cost paid by them. R. S. c. 23, § 81.

The notice required in the preceding, shall be by copy of the writ served upon the company at least thirty days before the sitting of the court to which it is returnable, or by such notice as the court may order after entry. R. S. c. 23, § 82.

The statute imposes upon a town no liability for any defect or want of repair in its public roads, so long as they are kept in a condition safe and convenient for travel. 36 Me. 393.

Structures for the passage of travelers, erected over a railroad where it crosses a public highway, fall under the designation of bridges. For the want of proper repair of such bridges and their abutments, being a part of the highway which the town is bound to maintain, the town is liable to indictment. 37 Me. 451.

Towns, in making necessary repairs on their streets and sidewalks, may interrupt public travel and obstruct them, without liability. But ways undergoing repair should not be left in the night time without precautionary means to give travelers warning. If such precautionary means are neglected, towns are liable. 38 Me. 219.

A town is not liable for injuries to property, by defective highways, unless the person in charge of the property exercised ordinary care. 38 Me. 443.

A traveler, with his horse and carriage, where the highway is unobstructed, without notice of a carriage behind him, may use any part of it wrought for public accommodation. 40 Me. 64.

When, by reason of snowdrifts, that part of the highway prepared for travel becomes impassable, and a passage way outside and over the gutter of the road is used, instead of the road, the town is liable for damages resulting from such use. If a thaw

and rain occur prior to the accident, it is sufficient notice to the town that such way is unsafe. 40 Me. 176.

Town is liable for injury caused by defect in a way that has been constructed and opened for travelers, although the time allowed for constructing the way had not elapsed when injury was received. 39 Me. 113.

Liability exists for injury received by child while traveling on a way. Not liable if child was playing. 42 Me. 248.

Town liable when defect made a horse uncontrollable thereby injuring the driver by throwing him out. 63 Me. 393.

Way must be safe and convenient in winter as well as passable. 62 Me. 101.

Not liable for injury received by a person not using the way for traveling but using it simply as an appurtenant to the house in which she resides. 62 Me. 470.

Liable for injury received by a person while walking for exercise on the Lord's day. 69 Me. 116.

Not liable for injury received by person using the way for horse racing. 67 Me. 167.

Way need not be wrought for travel the whole width. 85 Me. 523.

Person coming from schoolhouse to the road is not a traveler. 82 Me. 273.

Way must be wide enough to be reasonably safe and convenient. 85 Me. 523.

Liable for injury received from defect in way although the person injured was riding on the Lord's day for the enjoyment of the air and exercise. 87 Me. 259.

An action to recover damages, occasioned by a defect in a highway, is a transitory action, and may be brought in the county where the plaintiff lives, if within the state. 15 Me. 89.

An action on the case, brought under revised statutes of eighteen hundred and forty-one, chapter twenty-five, section eighty-nine, against a town for a personal injury, caused by a defect in its highway, and which action was pending when revised statutes of eighteen hundred and fifty-seven, chapter eighty-seven, section eight, took effect, will not, after that time, abate by the death of the plaintiff, but may be prosecuted by the executor or administrator of the deceased. 45 Me. 209.

Safety and convenience for travelers, and their horses and teams, is the rule by which to judge whether there be any defect or want of repair, or sufficient railing upon the highways. 42 Me. 248 ; 37 Me. 250 ; 36 Me. 293.

Sections fifty-seven and eighty-nine of revised statutes of eighteen hundred and forty-one, chapter twenty-five, entitled "of ways," are in harmony, and are counterparts of each other. 36 Me. 393.

The terms "safe and convenient," as used in the statute in relation to roads, do not mean entirely safe and entirely convenient, but are to be considered by the jury in a particular sense, according to their knowledge and experience in the ordinary transactions of men. 33 Me. 460.

In communicating the rule, the words are employed in their usually accepted meaning. Ib.

Revised statutes eighteen hundred and seventy-one, chapter eighteen, section forty-six, requiring highway surveyors forthwith to make the highways within their limits "passable," when they become blocked up or incumbered with snow, does not repeal, supersede or qualify section forty of the same chapter, in respect to such highways, which requires towns to keep their ways safe and convenient for travelers; nor does it exempt towns from the liability imposed by section sixty-five. 62 Me. 101.

Highways are not only to be kept "passable," but they must be so passable that travelers may use them with safety and convenience by the exercise of ordinary care. Ib.

The liability of a town for a defective way is commensurate with its right and obligation to repair it. 64 Me. 57.

The liability of a town for damages arising from a defective highway, depends upon proof of the same facts that would render it liable to indictment; and, in all cases where it may be held for damages, it may be indicted. 42 Me. 522; 26 Me. 234.

A town is not required to render its roads passable for traveling for the entire width of their located limits, but only to keep a width thereof in a smooth condition, sufficient to render the passing over them safe and convenient. 68 Me. 152; 18 Me. 286.

But the remainder of the road is not to be made more dangerous than in its natural state, except by obstacles necessarily

occasioned by making and repairing the traveled path. 18 Me. 286.

If there be a defect in the road, however small, which occasions the injury, the party using the common and ordinary care, the town is liable. 26 Me. 234.

Towns are liable for injuries, occasioned as well by obstructions placed or deposited in the highway, as by defects in making or repairing it. 11 Me. 271.

To allow the sides of the traveled path to be incumbered by logs or other things unnecessarily placed there, subjects the town to the payment of damages. 18 Me. 286.

The law has not prescribed what imperfections in a road will constitute the defect referred to in the statute. It is a fact for the jury to settle, what condition of the road would be safe and convenient, or otherwise. 26 Me. 234.

What obstructions or other inconveniences will render a highway defective, so as to make the town liable if an injury is thereby occasioned, is, to a considerable extent, a matter of opinion or judgment, and one in relation to which persons of ordinarily good judgment are liable to differ. The same is true as to what constitutes due care. 65 Me. 285.

The court will not, therefore, assume that the jury have acted dishonestly or perversely, simply because they have come to a conclusion different from that to which the court would have come upon the same evidence. *Ib.*

A defect or want of repair, is either inert matter incumbering the highway, upon or over it, or structural defects endangering public travel. 42 Me. 522.

Hence, a team temporarily stationary in a street or road, under the charge of the owner or driver, is not a defect or want of repair to be amended, nor an obstruction to be removed; and the town or city is not liable for injuries occasioned thereby. Tenney, J., dissenting. *Ib.*

A city is not liable for an injury occasioned by teams standing on a bridge or street for market, and waiting for purchasers, under the care of their drivers. 42 Me. 522.

While A. was driving his horse, harnessed to a chaise, over a bridge, the horse took fright at a tree on a wagon which was standing there temporarily, in charge of the driver, ran away, overturned the chaise and injured A.; *Held*, that the town was not liable therefor, either civilly or criminally. *Ib.*

Towns are not responsible for nuisances arising from the unlawful use of the highway, without their knowledge or assent, the road, as a road, being safe and convenient. *Ib.*

A thing rightfully in the highway may constitute a defect by remaining there an unreasonable time; but to hold the inhabitants liable in such case, on the ground of notice, they must know not only that the thing is there, but that it is there under circumstances which constitute a defect. 68 Me. 358.

Thus, an eight ton boiler was transported from Kittery station towards the navy yard, its destination, and left in the highway at six P. M., and allowed to remain there, with knowledge of the inhabitants, till seven o'clock the next morning, when the plaintiff's horse took fright thereat, and in consequence ran away, and the plaintiff was hurt. *Held*, that, to render the inhabitants liable, it was necessary that they have reasonable notice not only that the boiler was there, but that it was unnecessarily there; in other words, knowledge of the illegal element which constitutes it a defect. *Ib.*

The body of a common riding wagon, left on the side of the road, and laid up edgewise against some bushes within the limits of the road, but entirely outside of the traveled track, which frightened a horse, and thereby caused an injury, is not such an incumbrance as would render the town liable in damages for a defective highway; the question decided being referred to the court, as one of both fact and law. 66 Me. 402.

The town could not reasonably have expected that such an object would naturally have the effect to frighten an ordinarily kind, gentle and safe animal, well broken for traveling upon our public roads. *Ib.*

If one is injured by driving or falling into an excavation in one of the public streets of a city, which is left at night without being sufficiently lighted or guarded, a recovery may be had against the city, although the excavation was made by a company engaged in constructing the public water works of the city. 67 Me. 385.

For an injury received by a defect occasioned by the freezing and thawing of the road, towns are liable to the party injured, if they have reasonable notice. 37 Me. 250.

But evidence that a greater portion of the ways in the same town was defective for the same cause only, is inadmissible. *Ib.*

If, by an omission on the part of a town to keep in repair its culvert under one of its public roads, an injury occur to the neighboring land from a flowing back of the water, the remedy, if any, against the town, is only at common law. 36 Me. 393.

When such back-flowing arises from an obstruction placed in the culvert by a mere wrongdoer, the town is not liable either by the statute or common law. Ib.

The jury are not to infer a defect in a highway at a particular time and place, simply because an injury was sustained at that time and place; but they are to consider that in connection with the other facts in the case. 33 Me. 460.

In suits for injuries sustained by alleged defects in the highways, the jury may consider the nature of the business in the town, but such business forms only one of the facts to be considered in connection with the others, and with the obligation of the town to keep the way in a safe and convenient state of repair for the inhabitants of other towns, as well as of its own inhabitants. Ib.

If the highway at a railroad crossing is defective, and the town has notice of it, it is no defence that the particular defect was one which the railroad company ought to have repaired. 51 Me. 313.

A town is not liable to pay damages for injuries occasioned by defects in a highway, until after the expiration of the time allowed by the county commissioners for opening and making the road, though the town may have opened and partially made it. 12 Me. 300.

Towns, having reasonable notice of a defect in one of their highways, are liable for an injury arising therefrom, after it is constructed and opened for travelers, although the time in which they were allowed to build it had not elapsed. 39 Me. 113.

Towns, in making necessary repairs upon their streets and sidewalks, may obstruct them and interrupt the public travel, without incurring any liability therefor, if they are not left in the night time without precautionary means for warning travelers of their danger; in which latter case, towns are liable. 38 Me. 219.

For injuries occasioned by a necessary alteration of an highway, through want of sufficient notice or warning of such change, the town is primarily liable, although such alteration is being

effected by a railroad company, under authority of their charter. 40 Me. 96.

Towns are not liable for injuries occasioned by such obstructions as are necessarily created in highways in order to repair them, provided reasonable measures are taken to notify travelers of their existence. Such obstructions are not, in any proper sense, defects. 55 Me. 46.

A town is justified in closing up a road by obstructions across it, whilst out of repair; and whilst making repairs; but, if it proceeds to make repairs without making known that it is not in a condition to be used, the liability of the town to pay for injuries remains, as in other cases. 16 Me. 187.

Where it is apparent that the road is so much out of repair, or so much incumbered as to leave only a narrow and difficult passage, a traveler is not justified in driving with so much rapidity, or with so little care, as if it were unincumbered; but is bound to exercise ordinary prudence and caution. *Ib.*

In such case, if the highway is left open for travel, while undergoing repairs, it is no defence to an action by a person who had suffered an injury on that part of the road, that such person had been employed by the selectmen of the town to open a temporary road over the land of an individual, with his consent, for the accommodation of travelers, whilst such repairs were being made. 17 Me. 199.

A town has the right, in making or repairing a road, to remove stones and stumps on to, and leave natural obstructions upon, the sides of a way; provided the same are situated so far from the traveled track that persons with teams may pass without danger of coming in collision with them. 68 Me. 152.

A town is not liable for injuries occurring without the limits of a road legally located, or legally existing by virtue of a long continued user. 66 Me. 348; 64 Me. 57.

But where a railing is necessary for the safety of travelers, the want of such railing is a defect in the way, for which the town will be liable. *Ib.*

Towns are not liable for obstructions on the portions of a highway not constituting the traveled path, and not so connected with it as to affect the safety of the traveled portion. 46 Me. 483.

A traveler on the highway may go out of the beaten track, at his own risk, as between himself and the town; but in so doing,

he is entitled to protection against the unlawful acts of the persons and corporations. Ib.

If road commissioners, of their own authority, extend the limits of the road, the town is not liable therefor. 66 Me. 348.

If individuals build a sidewalk, of their own motion, outside of the limits of the road, they do not thereby render the town liable for its defects. Ib.

If they build it upon land illegally taken by the road commissioners, outside of the limits of the road, the town is not responsible for the defects of the sidewalk so built without its authority, and which they would be trespassers in attempting to repair. Ib.

Where an open and well beaten path led from the traveled part of the road to an apparently safe and convenient watering place by the side of the way, and within the limits of the road, as laid out, but which was in fact a deep and miry pit, covered with water; and the horse of a traveler was turned to it to drink, and fell into it and was drowned, the town was liable to pay for the horse. 14 Me. 198.

When, by reason of snowdrifts, that part of a highway prepared for travel becomes impassable, and a passage way outside and over the gutter of the road is used instead of it, the town is liable for damages sustained by travelers over such passage way. And if a thaw and rain occur prior to the accident, it is sufficient notice to the town that such passage way is unsafe. 40 Me. 176.

That, which was not a defect before, cannot be made so by another and an independent defect, having no connection with it. 68 Me. 365.

The highway was safe and convenient, except that the owner of the adjoining land, in building a cattle pass, opened a trench across the entire width of the traveled portion of the road, rendering it temporarily impassable. The plaintiff, to get by this obstruction, passed through the adjoining field, and in coming from the field into the road, her carriage struck a rock within the limits, but outside of the wrought portion of the highway, and she was thrown out and hurt. *Held*, that the town was not liable. Ib.

When one voluntarily leaves the highway for any purpose, and on going out of it or returning into it, at a point which the town has not prepared for travel, receives an injury from an obstacle outside the traveled path, the town is not responsible.

And it makes no difference whether the obstacle is without or within the limits of the way as located, provided it is so situated as not to create a danger or an inconvenience to travelers who keep within that portion of the way which is prepared for travel. *Ib.*

One who received an injury while crossing planking placed over a gutter, within the located limits of a public street, but outside of the wrought portion thereof, put there to facilitate access to and from the street and a private way or court, is not a traveler upon said street, within the meaning of revised statutes of eighteen hundred and seventy-one, chapter eighteen, sections forty and sixty-five, so as to entitle him to maintain an action against the town liable to keep it in repair. 63 Me. 477.

A person who, in pursuit of pleasure, designedly leaves the street, and passes beyond its limits, into an unfenced vacant lot, to attend a circus, and there falls into an excavation made for a reservoir, and is injured, cannot maintain an action under chapter eighteen of the revised statutes of eighteen hundred and fifty-seven, section sixty-one, against the town or city. 57 Me. 375.

Nor is the city liable, under section eight, chapter seventeen, of the revised statutes of eighteen hundred and fifty-seven, for a nuisance, in the absence of proof that the reservoir was so located as to obstruct or encumber a public way, or some previously existing private way. *Ib.*

Nor is the city liable, under chapter eighteen of the revised statutes of eighteen hundred and fifty-seven, section seventy-five, nor at common law, as for gross negligence in omitting to place guards, railings, or lights about it, to indicate its position. *Ib.*

A way opposite the place where an accident happened, was safe and convenient for travelers; from this road and within the limits of the highway, there was a passage way, not made by the town, leading to a watering trough, (placed there without authority of the town,) and coming into the road beyond; and the plaintiff drove his horse around said passage way, to the trough for the purpose of watering him, and while in the act of leaving the trough, the horse drew the carriage wheel upon a rock lying in its original place in the passage way, in consequence of which the plaintiff's wife was thrown from the carriage and injured. The way contained nothing to allure, deceive or entrap travelers into unperceived dangers; *Held*, plaintiff could not recover of the town. Appleton, C. J., Kent, Barrows and Danforth, *contra*. 57 Me. 529.

By virtue of public laws of eighteen hundred and seventy, chapter one hundred, section one, when there is a subsisting verdict, and a majority of the justices qualified to sit in the case, do not concur in granting a new trial, there must be judgment on the verdict. *Ib.*

At the foot of a hill, a highway became comparatively level, and the travel passed, for several rods upon each side of the middle track, as well as in it; the side tracks being largely used. In October, eighteen hundred and seventy, the town constructed a culvert across the centre of the located way, about eighteen feet long, with the surface of the covering stone about six feet wide and eighteen inches above the general level of the ground. Earth was carted in to make the grade on each approach to the culvert for a distance of six to fifteen feet, but the stones of one side of the culvert were exposed. The culvert, thus constructed, left ample space for teams to pass along the easterly side of it, in the old side track. The earth used to fill the approaches became very muddy with the fall rains, and was then trodden up and frozen in a very rough condition. The embankment of the culvert was not railed or guarded. To avoid the bad place in the middle of the road, thus caused, teams used to sheer to the east, pass the end of the culvert, and then reënter the main road. After the snow came, the wind swept it from the culvert, and, to avoid the bare place, teams continued to follow the side track. The plaintiff was familiar with the road before the building of the culvert, but had not passed it afterwards until the time of the injury, which happened about ten o'clock of the night of the fifteenth of February, eighteen hundred and seven-one, and was caused by his driving along the eastern side track so near to the culvert that one runner of the sleigh struck the exposed stones, whereby he was thrown out and injured. Under these circumstances, a finding by the jury, that the way was so defective as to make the town liable for the injury, was not so clearly unsupported by the evidence as to justify setting aside the verdict. 64 Me. 541.

Upon this state of facts, the defendants asked to have the jury instructed that "if Whitney was driving at the rate of five or six miles an hour, as he testifies, in a dark night as he describes that of the accident, then he was not in the exercise of due care." This instruction was properly refused, the question of ordinary care having been left to the jury, under correct instructions. *Ib.*

To maintain such a suit against a town, it must be proved that the highway was not safe and convenient; that the plaintiff

exercised ordinary care; and that the injury was occasioned by the defect alone. 32 Me. 46, 574; 38 Me. 204.

When an injury is occasioned by the united effect of a defect in the way and any other cause, the party bound to keep the road in repair is not liable. 32 Me. 46, 574; 38 Me. 204; 42 Me. 346.

In an action against a town, for the loss of a horse, occasioned by a defect in a highway, so long as there is any doubt whether the death of the horse was occasioned by the injury or by disease, the plaintiff is not entitled to recover. 20 Me. 47.

If there are two efficient, independent proximate causes of an injury sustained by a traveler on a highway, the primary cause being one for which the town is not responsible, and the other being a defect in such highway, the injury cannot be said to have been received "through such defect," and the town is not liable therefor. And it makes no difference that the traveler himself was in no fault. 51 Me. 127.

A town is not liable for damage sustained by a traveler, from the fright of his horse at meeting cows in the road, with boards on their horns, and also from a defect in the way, the combined action of both causes operating to produce the accident. 51 Me. 127; 68 Me. 152.

When a horse, through fright at the striking of the carriage to which he is attached, against an obstruction in the highway, becomes uncontrollable, runs away and injures the driver by throwing him out, the defect in the highway is the proximate cause of the injury. 63 Me. 393.

In a suit against a town for damage through a defect in the road, the plaintiff, to account for the violence of his horse, may show that near the defect where the injury occurred, was another defect in the road, which he had just passed without injury. 31 Me. 299.

While the plaintiff, with horse and wagon, was traveling along the highway, her horse became frightened at a large rock, dug out of the earth by the town, and left in the traveled way, in a situation calculated to frighten horses passing by. In attempting to dismount from the wagon, she fell and was injured. Neither she nor the horse was at fault. The rock was, *per se*, a defect in the way. *Held*,

1. That, if she was dismounting to prevent upsetting, while the horse was restless and unmanageable from the fright, (the

plaintiff's version,) the defect in the way may be held to be the proximate cause of the injury;

2. That, if the horse was manageable, and the plaintiff was dismounting to lead the horse by, when he started up and threw her down, but not on account of any fright at that moment at the rock, (the defendants' version,) the defect in the way could not be considered as the proximate cause of the injury;

3. That, a town may be liable to a traveler for an injury occurring from the fright of his horse, at an obstruction in the traveled way, which is an actual defect therein, although not coming in contact therewith; but not unless the object of fright presents an appearance that would be likely to frighten ordinary horses; nor unless the appearance of the object is such that it should reasonably be expected by the town that it naturally might have that effect; nor unless the horse was, at least, an ordinarily kind, gentle and safe animal, and well broken for traveling upon our public roads. 65 Me. 547.

The plaintiff was driving over a defective bridge in the defendant town, when, without his fault, the horse broke through the bridge and fell. The plaintiff, in trying to extricate the horse, received a blow from the horse's head, and was injured by it. He was at the time exercising ordinary care. *Held*, that the defect in the way was the proximate cause of such injury. 64 Me. 51.

In an action against a town, for an injury on a highway, caused by a snowdrift therein, the law regards the direct and not the remote cause of the injury; and if the drift alone directly caused the injury, certain deposits of wood and cedar within the limits of the highway contributed to the formation of the drift, the wood and cedar would not be defects for which the town would be responsible, but the drift might be such a defect. 62 Me. 101.

Where a defect in a highway was the true, efficient cause of an accident, it is not necessary that the road should be defective at the spot where the ultimate injury occurs. 61 Me. 569.

The public, as foot passengers, have the right to use the carriage way as well as the sidewalks. Walking in the carriage way is not, of itself, *prima facie* evidence of want of ordinary care; nor from that fact alone will the law infer negligence. 42 Me. 332.

Where a person, on foot, was on his way to visit the house of a neighbor on Sunday evening, and was injured by a defect in

the highway; *Held*, he could not recover for such injury. 57 Me. 423.

Where children use a part of the public road for their sports, the town or city through which the way passes is not responsible for injuries received by any of the children so engaged, though the injuries may result from a defect in the road. Goodenow, J., dissenting. 42 Me. 248.

An action does not lie against the town in favor of a person who receives an injury from a defective highway, while using such highway for the express purpose of horse racing, and matching his horse for speed against other horses. 67 Me. 167.

Semble: *Aliter*, if the fast driving was merely incidental to traveling upon the highway for any of the legitimate purposes for which a highway is designed to be used. *Ib*.

The owner of a mare and colt turned them out upon the highway to water, when the colt ran away, and the owner, upon the back of the mare, started in pursuit, and while in such pursuit, the accident for which the suit was brought, occurred; *Held*, that the jury were properly instructed that if the plaintiff regained possession of both the animals, so as to be their keeper, before the accident happened, and they escaped without his fault, he would have a right to pursue them upon the highway, though he originally turned them out without a keeper. 63 Me. 468.

A ditch was dug along by the side of a house, and extended out into the street as located. There was no way to go from the house to the privy used therewith without either crossing the ditch or passing around that end of it which was in the street. The plaintiff, a minor, living in the house as a member of her father's family, having occasion to visit the water-closet in the evening, attempted, while upon her return to the house, and having no other purpose than to reach it in the safest way, to go round the end of the ditch. After crossing the line of the street, but before reaching the wrought portion of it, or the end of the ditch (the night being very dark), she turned, stumbled, fell into the ditch, and was injured; *Held*, that she was not in the use of the street as a traveler, within the meaning of the statute providing for the making and repair of highways. 62 Me. 468.

The ditch was dug by the father's landlord, for the purpose of drainage, and was suffered to remain open for several weeks before the accident; *Held*, that there was such negligence in the father in permitting the drain to remain so long in this danger-

ous condition, and that his minor child was so affected by his negligence, as to preclude a recovery by her in this case, even if she was otherwise entitled to recover. *Ib.*

In an action against a town, for an injury occasioned by a defect in a highway or bridge, there must be proof that the defect existed, and that the person driving over it was using ordinary care; which are questions for the jury. 11 Me. 335; 18 Me. 380; 26 Me. 234; 50 Me. 222.

And if, on the whole testimony on this point, the weight of evidence is clearly against the plaintiff, a new trial will be granted. 50 Me. 222.

Direct and positive testimony of due care, on the part of the person injured, is not essential to the maintenance of the action; the jury may infer it from facts in evidence. 18 Me. 380; 21 Me. 29.

The standard of care required of travelers upon the highway, is such care as persons of common prudence generally exercise. 32 Me. 574.

But, if the accident happens through the neglect or fault of the person injured, or by reason of any obstacle naturally existing, or necessarily placed in the highway out of the traveled path, he cannot recover against the town. 18 Me. 286.

In a suit for an injury sustained by the upsetting of a carriage through a defect in the highway, evidence that, on former occasions, the driver had "appeared to be a competent driver," seems to be inadmissible. 35 Me. 100.

In such actions, towns are not liable, unless the person in charge of the property injured was in the exercise of ordinary care at the time of the injury; and what is "ordinary care," must be determined by the circumstances of the case presented to the jury. 38 Me. 443.

The judge instructed the jury, upon the question of due care, etc., in driving, that the knowledge of the plaintiff, of the defect in the way, was not the knowledge of the son, who was driving the team: *Held*, such to be good law. *Ib.*

In an action to recover for injuries received through a defect in a highway, it is not reasonably certain that the verdict must be erroneous, because the jury failed to agree upon the answer to the question whether the plaintiff was driving at a rate exceeding six miles an hour. 58 Me. 199.

In an action for a personal injury caused by a defective highway, a request to instruct the jury "if they find that at the time of the accident the plaintiff was intoxicated, this, of itself, would constitute such a want of care as would preclude him from the right to recover," was properly refused, it being a question of fact. 48 Me. 477.

Permitting a woman to drive a horse, is not conclusive evidence of such want of ordinary care, as will excuse a town from their liability to pay for an injury sustained by the horse, from a defect in the highway. 14 Me. 198.

If a traveler's horse, without fault of the town, should be running violently upon the road, as a matter of law, that the town is not responsible for an injury sustained by the traveler, through a defect in the road, though it might not have occurred but for such running. 31 Me. 299.

The fact that a party plaintiff in an action against a city, to recover compensation for injuries occasioned by a defect in a highway, was driving at a rate of speed exceeding six miles an hour, in violation of an ordinance of such city, will not excuse the town for a neglect to make its ways safe and convenient for travelers, if the commission of the plaintiff's offense did not in any degree contribute to produce the injury of which he complains. 58 Me. 199.

If individual inhabitants of a town have knowledge of a defect in a road, this is sufficient notice to the town, in its corporate capacity, of such defect. 23 Me. 556; 21 Me. 29; 7 Me. 442; 32 Me. 271.

It is not necessary to prove that the surveyor or selectmen had notice of the existence of the nuisance, if seasonably known to other inhabitants. 7 Me. 442.

In an action against a town, for an injury occasioned by reason of an obstruction suffered to remain upon its highway, an instruction "that notice of a defect to any inhabitant of the town, of sufficient intelligence to know and appreciate the danger, and for a sufficient length of time to enable such a person, by the use of due diligence, to remove it, or to give notice to other inhabitants of the town of its existence, so as to enable them to remove it, if the person, to whom the defect was first known, was not a competent or suitable person to do it, was all the law required," was *Held*, erroneous. 58 Me. 222.

Where a stick of timber was deposited in the highway, on the confines of a village, one or two hours before sunset, and was

seen by several inhabitants, and, the same evening, a person riding in a chaise, was thrown out and injured by reason of the wheel striking against it, the town had sufficient notice. 7 Me. 442.

To sustain such an action, it must appear that the town had actual "reasonable notice of the defect," although the jury may infer actual notice, in any case, from the circumstances proved. 51 Me. 532; 56 Me. 15.

And the state of the weather, and its natural effect upon the ice over which the public have traveled, are proper matters for the consideration of the jury, upon the question of notice. 56 Me. 15.

What is reasonable notice to the town, of the existence of a nuisance in a highway, is a question of law. 7 Me. 442; 21 Me. 29.

A plank eight or ten feet long and ten or twelve inches wide, standing in a hole over a culvert, and in the traveled part of the way, is, in the daytime, "a reasonable notice" that that portion of the road is not in a usable condition. 55 Me. 46.

There is no rule of law prescribing for what length of time the continuance of a defect in a highway shall constitute notice of its existence. 57 Me. 181.

Where the judge instructed the jury that if they found a legal defect, and that it was open and visible during the whole of November, that the fact constituted sufficient notice, *Held*, error. *Ib*.

Public laws of eighteen hundred and seventy-four, chapter two hundred and fifteen, approved March third, eighteen hundred and seventy-four, took effect at the expiration of thirty days after the adjournment of the legislature that enacted it, and consequently has no application to the case of an injury received March seven, eighteen hundred and seventy-four. 64 Me. 133.

The notice required by the act of eighteen hundred and seventy-four, to be given to a town, by a person receiving an injury by reason of a defect in a highway, may be "by letter, or otherwise, setting forth his claim for damages, and specifying the nature of his injuries." 66 Me. 332.

In such case, a notice is sufficient, which describes the fact substantially, and in general terms, so that thereby a town may have statements and intimations that would be likely to lead

them, acting reasonably, into such inquiry and investigation as would result in their acquiring a full knowledge of the facts of the case; and a demand for damages for an injury to plaintiff's horse, is a sufficient statement of "the nature of the [plaintiff's] injuries." *Ib.*

A notice of the injury, served upon the mayor of the city, is notice to the city. *Ib.*

The notice of a party, injured by a defect in a public highway, to the town liable for the damage, required by the act of eighteen hundred and seventy-four, chapter two hundred and fifteen, need not be in writing. It is otherwise by the act of eighteen hundred and seventy-six, chapter ninety-seven. 66 Me. 453.

It is not necessary that the amount of damages claimed should be stated in dollars and cents. *Ib.*

Where a claim for damages caused by a defective highway is made against a city, the mayor has no authority to waive the notice in writing, required by the statute of eighteen hundred and seventy-six, chapter ninety-seven, and repeated with a change as to the time in the statute of eighteen hundred and seventy-seven, chapter two hundred and six. 68 Me. 511.

In such case, a verbal notice is not sufficient, nor one in writing after the expiration of the sixty days specified in the statute. *Ib.*

The statute of eighteen hundred and seventy-four, chapter two hundred and fifteen, does not require the administrator of a person, instantly killed, by reason of a defect in a highway or bridge, to give the notice to the selectmen of the delinquent town, which one injured in his property or person is there required to give within sixty days after the occurrence of the accident. 66 Me. 545.

Towns are liable, severally, in the cases referred to in the statute, for damage caused by defects in ways and bridges which they are bound to maintain; and they cannot be relieved, either in whole or in part, from this liability, by the fact that they had united with another town in maintaining a bridge across a stream which constitutes the dividing line between them, though both towns are negligent, and the bridge is defective in the neighboring town, where the accident is caused, by a defect on their own side of the line. *Ib.*

A town is not liable, in any form, for the defects in a road, unless, by regular legal proceedings, or by user and acquiescence

for a sufficient length of time, they have acquired the right to make and repair the road, which may be after a user for twenty years. 2 Me. 55; 4 Me. 270.

When there is a long continued user of a highway, which the town or city has repaired, or there is a dedication made and accepted, the town or city is liable for injuries arising from its defects, when the person injured is without fault. 58 Me. 348.

If the officers of a town, in constructing or repairing a public way, dispose of the waste rocks or earth, for the benefit of some individual, so as to improve a private way belonging to him, the repairs thus made on the private way are made for its owner, and not for the town; and the town is not estopped from denying its location, in an action to recover for injuries sustained in consequence of a defect in such private way. 51 Me. 182.

Revised statutes of eighteen hundred and fifty-seven, chapter eighteen, section sixty-two, assumes the existence of a way de facto in actual use at the place where the injury occurred; and, although the party cannot deny the location of the way where the repairs are made, he may deny that the place where the injury occurred is the same way. 51 Me. 182; 54 Me. 93.

The fact that the way is "continuous," is not the only fact to be considered in deciding whether the injury and the repairs are both on the same way, and is a question of fact depending on the circumstances of each case. 51 Me. 182.

The distance from the defect to the place of repairs; the length of time the way has been used; locality, whether in a city or in the country; and whether there are intersecting roads or streets, together with the continuity or oneness of the way, are also to be considered. *Ib.*

In an action by one town against another, for injury to a bridge by turning the current of the stream, the defendants cannot question the validity of the location of the way in the plaintiff town, if the records show that the county commissioners had jurisdiction in the case, and made an actual location which has never been quashed. 65 Me. 449; 68 Me. 492.

CHAPTER XXXIX.

OBSTRUCTIONS IN HIGHWAYS, INJURIES, ETC.

Any person may take down and remove gates, bars or fences, upon or across any highway or town way, unless they are there to prevent the spread of infectious disease, or were placed there by license of the county commissioners or municipal officers of the town. To those granting such license, a person aggrieved by such removal may apply, and on proof that such erections were made by their license, they may order them to be replaced by the person who removed them. R. S. c. 23, § 87.

When logs, lumber or other obstructions, without necessity are left on such ways, any road commissioner, or when no road commissioner is chosen, one of the municipal officers, may remove them; and he shall not be liable for loss or damage thereof, unless occasioned by design or gross negligence. When no person appears to pay the expense and trouble of removal, he may sell at public auction so much thereof, as is sufficient for the purpose, with charges of sale, posting notice of the time and place of sale in two public places in the town seven days prior thereto. The person through whose neglect or willful default they were left, may be prosecuted as for a nuisance. R. S. c. 23, § 88.

When anything has been adjudged to be a nuisance and to be abated, and the materials of which it is composed do not, on sale as aforesaid produce sufficient to pay the charges of prosecution, removal and sale, the court may order the deficiency to be raised by levy on the personal property of the person convicted of causing such nuisance. R. S. c. 23, § 89.

In a highway laid out through the lands of individuals the public has only a right of passage. No person has a right to pasture it, or to plow it, except for repairs, or to cut grass growing on it. 6 Pick. 57; 82 Me. 391.

"Highway" may include a county bridge, county road or county way. R. S. c. 1, § 6.

A town may recover for damage sustained by throwing back the water upon the banks of its public highway by means of a dam. 82 Me. 391.

Railroad may unload its cars in a street or way if done prudently and in a reasonable manner with respect to the rights of other travelers. 58 Me. 56.

Merchant may use skids to unload car into his store even though the street is obstructed thereby, provided that ample room is left on the opposite side of the car for travelers to pass. 58 Me. 56; 81 Me. 364.

The obstructing or encumbering by fences, buildings or otherwise, of highways, private ways, streets, alleys, commons, common landing places or burying grounds, are nuisances within the limitations and exceptions of chapter twenty-two of the revised statutes. R. S. c. 22, § 5.

A remedy by action lies in favor of a town for damages sustained by flowing back the water upon the banks of its public highway by a dam, though erected for mill purposes only. 35 Me. 247.

And that, too, though the owner of the dam may have obtained the permission of the proprietor to flow the land; and though the town, at a reasonable expense, might have prevented the damage; and though other causes, jointly with the dam, contributed to occasion the damage; and though the dam was not the principal part of the damage. *Ib.*

If a private way be unlawfully obstructed by the owner of the adjoining land, a person entitled to use the way may pass over the adjoining close, so far as may be necessary to avoid the obstructions, taking care to do no unnecessary damage. 53 Me. 160.

Under the statutes in force in eighteen hundred and ten, relating to roads, it may well be questioned whether the selectmen of towns had authority to do more than lay out roads; and the expression of an opinion in a report of the laying out of a road, that "two bars or gates may be kept up across the road," although the report was accepted by the town, confers upon the owner of the land no authority thus to encumber the road. 46 Me. 453.

The provisions of statute eighteen hundred and twenty, chapter one hundred and eighteen, section twenty-five, relate to private ways which are laid out for the benefit of individuals; but

a nuisance in a town road or public highway may be removed by any one whose passage is obstructed by it. 12 Me. 32.

P. recovered judgment against the plaintiffs for damages occasioned by a defect in one of their highways. The defect complained of was an excavation caused by the defendants, who were duly notified of the pendency of the former suit. In an action by the plaintiffs against the defendants, to recover the amount of such judgment, *Held*,

1. That the verdict and judgment were conclusive evidence of the existence of the defect, the injury to P. while in the exercise of due care, and the amount of the injury;

2. That it was incompetent for the defendants to prove that, in making the excavation, they were guilty of no negligence, and that they properly guarded and covered the same at the time of leaving off work on the night of the alleged injury. 54 Me. 46.

If a private citizen be guilty of a nuisance in making an excavation in a public highway, he will be responsible for injuries arising therefrom during its continuance. *Ib*.

No private person or corporation has the right to place or cause any obstruction, which interferes with the rights of others, on any part of the highway, within its exterior limits. For such obstruction, the extent of a town's liability is not the measure of the liability of a private person. 46 Me. 483.

A merchant occupying a store on a street within whose limits the track of a railroad is located, may load or unload flour from a car standing temporarily on such track in front of his store, and thus obstruct more or less that part of the way between his store and the car, provided that portion of the way between the car and the opposite side of the street furnishes ample room for the accommodation of travel. 58 Me. 56.

A railroad company, whose road is located within the limits of a highway, has the right to load or unload a car, standing for that purpose on its track, within the traveled part of the street, doing it in such a manner as not unreasonably to interfere with the right or convenience of those having occasion to use the way for the ordinary purposes of travel. *Ib*.

CHAPTER XL.

ROAD COMMISSIONER.

Each town at its annual meeting may elect, and all towns with over sixty-five hundred inhabitants shall elect by major vote a road commissioner, who shall hold his office for the term of one year from the date of his election. Any town may, at its option, elect more than three commissioners, whose powers and duties shall be the same as prescribed for a single commissioner. No person shall, at the same time, hold the office of road commissioner and selectman. R. S. c. 4, § 13.

If a person elected as road commissioner fails to qualify before the first Monday of April, the office shall be deemed vacant, and shall be filled by the selectmen by appointment; and in the event of a vacancy caused by death or otherwise, the selectmen shall appoint some competent person to serve as road commissioner until the next annual meeting, who shall qualify and determine the duties of said office. If a town fails to elect a road commissioner at its annual meeting, the money raised and assessed for the repair of bridges and ways, as provided by section seventy of chapter twenty-three of the revised statutes shall be expended for that purpose by the selectmen; if after the choice of any officer not required to be chosen by ballot, there is a vacancy in any such office, the municipal officers may fill such vacancies by the written appointment of proper persons, who shall be summoned by the constable to appear and take the oath of office provided in section twenty-five of chapter four of the revised statutes, subject to the penalties provided in section twenty-six of said chapter. Such appointment and oath shall be regarded as in case of a choice by the town. No person shall be so appointed without his consent. R. S. c. 4, § 15.

Road commissioners shall be elected by ballot at town meeting. R. S. c. 4, § 14.

A road commissioner is an officer or agent of the town, created by statute, whose powers, rights and liabilities are all defined and all rest upon this written law. All road commis-

sioners are to be chosen by the town, but the selectmen are required to assign in writing to each road commissioner his division and limits, to be observed by him. The duty of the road commissioner is to superintend the expenditure on the highways, so assigned, of the amount he may receive. He is not a general agent, authorized and bound to keep all highways in his district in a safe and convenient condition, and to do this at his own discretion and at an unlimited cost. His duty is limited and specific. If he fails to expend the money when available, when defects require the expenditure, or fails to give notice of a deficiency to the town officers, he may be liable to indictment, instead of the town. But he is not bound to expend his own money, or to make himself liable to others for labor done at his personal request. He is simply to use, at his best discretion, what he can obtain in labor or money from the persons named in his list. If this proves insufficient, from any cause, and the duty and interest of the town require further expenditures, it is his duty to consult the selectmen, and they may authorize him, in writing, to employ inhabitants of the town to labor for pay, to a certain amount. 51 Me. 352.

Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes, by a road commissioner or commissioners, or by the selectmen as the town may determine. R. S. c. 23, § 70.

When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down, as will render them passable. The town may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall, without delay, cause them to be repaired. And all damages accruing to a person in his business or property, through neglect of such road commissioner or the municipal officers of such town, to so render passable, ways that are blocked or encumbered with snow, within a reasonable time, may be recovered of such town by a special action on the case. R. S. c. 23, § 62.

There shall be furnished and kept in repair in each section of the town, through which there is a mail route, some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of ten feet, and the municipal officers of towns, or any road commissioner under

their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein; but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner. R. S. c. 23, § 63.

A sum not exceeding five per cent of the amount raised for repair of ways and bridges may be expended by a road commissioner under the direction of the municipal officers, in planting trees about public burying grounds, squares and ways, if the town by vote authorizes it. R. S. c. 23, § 64.

A road commissioner may remove any obstacle, which obstructs or is likely to obstruct a way, or render its passage dangerous. He may dig for stone, gravel or other material suitable for making or repairing ways in land not enclosed or planted, and remove the same to the ways. If the land from which such materials were taken is not within the limits of the way, the owner of it shall be paid therefor in money by the town, to be recovered after demand and refusal by the road commissioner, in an action as on an implied promise. R. S. c. 23, § 65.

If the land is seeded, or in any way prepared and used for tillage, or for the production of crops, or trees, useful or ornamental, the road commissioner must not dig upon it; such land is "planted," that is, subjected to the uses of husbandry, reclaimed from a state of nature, so that it has become "tillage or mowing land," the same as "corn or meadow". 78 Me. 30.

If the road commissioner acts unreasonably, indiscreetly or without honest purpose, with intent to oppress and injure, he is not protected by law. The injured party has redress by an action at law. 78 Me. 31.

Where owner of land abutting a highway planted ornamental trees along line of the road, some within and some without the road limits, the road commissioner has no right to destroy same without the call of public necessity. 78 Me. 31; 89 Me. 262.

Road commissioners shall go over the roads in their towns or cause it to be done, in April, May, June, August, September, October and November in each year, remove the loose obstructions to the public travel, and whenever so directed by the selectmen, remove all shrubbery and bushes growing within the limits of highways, not planted or cultivated therein for the purpose of profit or ornamentation, having care for the proper preservation of shade trees, and repair such defects as may occur

from time to time, rendering travel dangerous, or they shall give notice of such defects to the municipal officers, under a penalty of five dollars for neglect of such duty. R. S. c. 23, § 66.

No road commissioner without written permission from the municipal officers, shall cause a water course to be so constructed by the side of a way as to incommode any person's house or other building, or to obstruct any one in the prosecution of his business. Any person so aggrieved may complain to the municipal officers, who shall view the water course and may cause it to be altered as they direct. R. S. c. 23, § 67; 32 Me. 327; 63 Me. 480; 86 Me. 380.

The municipal officers are made agents of the town, by this statute, for such purposes, and may do the work at the town's expense. 89 Me. 426.

When a way or street is raised or lowered by a road commissioner or person authorized, to the injury of an owner of adjoining land, he may, within a year, apply in writing to the municipal officers and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town, and any person aggrieved by said assessment, may have them determined, on complaint to the supreme judicial court, in the manner prescribed in section twenty of chapter twenty-three of the revised statutes. Said complaint shall be filed at the term of the supreme judicial court, next to be held within the county where the land is situated, after sixty days from the date of assessment.

Where an existing street or road is dug down, to the injury of the owner of land adjoining, it is not an alteration, within the meaning of the statute, which will entitle the owner of land to damage. If the road commissioner dig down a street or road, with discretion, and not wantonly, no action at law can be maintained except as is provided by statute. 43 Me. 332.

"To the injury of the owner" means the owner at the time of the injury. No other person is or can be injured. 65 Me. 592.

When the amount appropriated is not sufficient to repair the ways a road commissioner may, with the written consent of the selectmen, employ inhabitants of the town to labor on such ways, to an amount not exceeding fifteen per cent of the amount so appropriated and in addition thereto. R. S. c. 23, § 69.

The written consent of a majority of the selectmen must be obtained. 3 Me. 445; 13 Me. 293.

A verbal direction is insufficient. 30 Me. 157.

If a road commissioner employs laborers upon the highways, upon the credit of the town, except by the written consent of the selectmen, when the money appropriated for the repairs within his limits prove insufficient, the town is not liable. 34 Me. 405; 51 Me. 352; 55 Me. 437; 84 Me. 22.

Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes, by a road commissioner or commissioners, or by the selectmen as each town may determine. R. S. c. 23, § 70; 72 Me. 517.

Sixty-five per cent of the highway taxes assessed shall be expended upon the highways prior to the fifteenth day of July, and the balance at such time as the commissioner, or in case no commissioner is elected, as the selectmen deem for the best good of the public. R. S. c. 23, § 71.

The road commissioner under the direction of the selectmen, shall have charge of the repairs of all highways and bridges within the towns and shall have authority to employ the necessary men and teams, and purchase timber, plank and other material for the repair of highways and bridges. He shall give bond to the satisfaction of the selectmen, and be responsible to them for the expenditure of money, and discharge of his duties generally. His compensation shall be such sum as the towns shall annually vote therefor, which sum shall, in no case be less than one dollar and fifty cents a day, for every day of actual service; and he shall render to the selectmen monthly statements of his expenditures, and receive no money from the treasury except on the order of the selectmen. R. S. c. 23, § 72; 95 Me. 482.

If a road commissioner fails to give the bond required by the foregoing section, he is not entitled to the compensation or emoluments of the office, even if he has performed the duties thereof. 95 Me. 484.

He shall keep accurate accounts, showing in detail, all moneys paid out by him, to whom and for what purpose; he shall settle his accounts on or before the twentieth day of February, annually, and the same shall be reported in the annual town report in detail. In case no commissioner is elected by a town at its annual meeting, the selectmen of said town shall keep accurate accounts showing in detail all moneys paid out by them for the repair of bridges and ways, to whom and for what purpose, and

the same shall be reported in the annual town report in detail. R. S. c. 23, § 73.

Towns may authorize their road commissioners or other persons to make contracts for opening or repairing their ways. R. S. c. 23, § 75.

In repairing ways, the extent to which road commissioners may encumber them, will be limited by the measure of necessity; and of this they are not the exclusive judges, but act at their peril. 11 Me. 271.

A road commissioner may lawfully remove a fence across the highway, without first requiring the owner of such fence to remove it. 13 Me. 250.

He has no authority to subject to a public easement any land not lying within the limits of the road. 32 Me. 325.

However important it may be to the public to have the water turned off from the highway, he has no authority to make a ditch for that purpose through adjoining lands. And, for such an act, trespass may be maintained by the owner of the land. Ib.

The acts of a street commissioner of a city, within the scope of the trust committed to him, are, *prima facie*, the acts of the city; whether they are within the general authority conferred, is a question of fact. 51 Me. 182.

It was not the intention of revised statutes of eighteen hundred and fifty-seven, chapter eighteen, section sixty-two, to authorize street commissioners, on their own motion, to bind their town or city, by constructing a way in whole or in part where none previously existed. 54 Me. 93.

A town is not liable for the tortious taking and use by the road commissioners of split stone (lying on land taken for a highway, and belonging to a private person), for the purpose of constructing a culvert across the highway which he is constructing. 51 Me. 359.

The herbage growing upon the highway belongs to the owner of the fee, and the public cannot use it or authorize it to be destroyed. The authorities may cut it for the purpose of improving the highway, but after severance it belongs to the owner of the soil. In regard to timber and materials the public have a right to use so much as may be necessary for the construction and repair of the road. But materials taken from one

part of a highway may be used on any other part thereof, or upon a different highway. In some cases it is held that the public can use only such materials as is necessary to remove in order to bring the road or street to grade or to improve or repair it at the point where the materials are taken. The rights of the public to such materials are paramount and may be protected by injunction. The city of Minneapolis made a contract for the building of a sewer in a street through a ledge of rock, by which the contractor was to excavate the street for its entire width to the arrival of the bottom of the sewer, construct the sewer and refill the street with other material, and take the stone quarried as compensation for his work. The owner of the fee sued for the value of the stone taken out. The court held that as to the part which it was necessary to remove in order to build the sewer, the city could dispose of it as it saw fit, but as to the remainder it was liable, the measure of damages being the value of the stone as it lay in the ledge. Subject to the rights of the public, the owner of the fee is the owner of the trees and materials in the roadway, and may take and use them in any way which does not interfere with the rights of the public. In regard to superfluous materials, the proper course would seem to be to notify the owner of the fee to remove them if he desires to do so. If, after a reasonable time has elapsed, he has not done so, then the public authorities may make any disposition of them they see fit. The later authorities seem rather to favor the position that materials which it is necessary to remove for the improvement of the way, belong absolutely to the public and may be disposed of as the public see fit. Abbott on Municipal Corporations, § 825. See also 125 Mass. 218; 43 Me. 334; 52 Me. 566; 79 Me. 363.

The selectmen of the defendant town addressed and delivered to the plaintiff, a duly appointed and sworn highway surveyor of the town, a written order, officially signed, of the following tenor: "You are requested to keep the snow broken down within the limits of your district, so as to make it passable, and to do it with as little expense to the town as possible, and to keep an account of each one's own labor, and make return of it to us five days before next annual meeting." Thereupon the plaintiff employed several men to aid him in suitably removing the snow, and paid them a reasonable compensation therefor, but made no return of their labor as directed. In assumpsit for his own labor and for the money paid to his employees, *Held*,

1. That the written order was directed to the plaintiff in his

official capacity, and required the performance of an official duty;

2. It did not authorize him to perform the labor, pay the employees, and look to the town for reimbursement; but that

3. As a surveyor under the statute, to employ, with the consent of the selectmen thus expressed, men, of whose work he was to make a return, and who would thereby become entitled to their pay from the treasury of the town. 55 Me. 433.

A street commissioner, or one acting under him, cannot be made liable for the purposes of the city council, while acting under an order passed within the scope of their authority, or for his own purposes in the proper execution of the order. 43 Me. 332.

If a surveyor of highways dig down a street or road with discretion, and not wantonly, he is not liable, either at common law or by statute, when acting under legal authority. Ib.

Where a new power is given by statute, and the means of executing it prescribed therein, the power must be executed accordingly. And this principle is applicable to the act of eighteen hundred and forty-six, chapter two hundred and sixteen. Ib.

A corporation, having power to raise money for the repair of highways, may make compensation therefor in the material taken from the same in the process of making the improvement. But, whether they can do so to the injury of the owner of adjoining land, where the record, conferring the power, shows the sole purpose to be for the benefit of the individual making the removal, may well be doubted. Ib.

A corporation, having the power to determine what repairs should be made in its roads and streets, may exercise, through its officers, acting within the scope of their authority, its own judgment, which cannot be set aside by a jury in a suit at law. Ib.

Trespass cannot be maintained by the proprietor of unfenced land, against persons building a new highway through it, for necessarily entering thereon, doing as little damage as may be, or if their cattle stray upon such land, against the will of their owner. 13 Me. 250.

The land owner, across whose land a highway has been legally located as an alteration of one previously existing, cannot maintain an action of trespass against the highway surveyor of his

district, for doing, within the limits of the location, only those acts which were necessary to make such highway passable, safe and convenient, even where it does not appear that the town had raised or appropriated money to make the alteration, or that the selectmen had specially directed the surveyor to expend his money upon that part of the way. 68 Me. 492.

By a valid alteration of an existing way, the newly located portion is substituted for the old, and the surveyor of the district may, in the exercise of his official discretion, expend the money in his rate bills thereon; and, unless he goes outside the located limits, or does acts injurious to the land owner within them which were not necessary for the proper preparation of the way for use, he will be justified. Ib.

Where a surveyor of highways was required by the selectmen to build a road, recently laid out, and, in doing it, he and those acting under his direction took from the plaintiff's land, lying contiguous to the road, not planted nor inclosed, a quantity of stone necessary for the building the road, trespass *quare clausum*, cannot be maintained against the surveyor and those under him, the remedy for compensation, by revised statutes eighteen hundred and forty-one, chapter twenty-five, section seventy-two, being in a different mode. 25 Me. 126.

A road commissioner is not liable for negligence of men employed by him. 97 Me. 536.

He is liable for his own negligence in furnishing men suitable appliances. 97 Me. 536; 99 Me. 208.

CHAPTER XLI.

TOLL BRIDGES.

All military companies, with their ordnance and equipage, on days of training or review, while under arms, or in going to or returning from their place of parade, and all persons going to or from a funeral, or public worship on the Lord's day, may pass over toll bridges, free of toll. R. S. c. 50, § 1.

Every traveler, claiming to pass any toll bridge free, shall communicate to the toll gatherer his name and place of abode, if

required. Whoever refuses or omits so to do, or willfully renders a false answer, and thereby evades the payment of his legal toll, forfeits to the proprietors ten dollars to be recovered in an action of debt. R. S. c. 50, § 2.

If any person driving neat cattle or horses over any toll bridge more than fifty feet in length from one abutment, pier, or trestle part to another, without the consent of the toll gatherer, or agent of the corporation owning it, permits more than twenty neat cattle or horses to be on such bridge at the same time, or drives or transports over it any loaded cart, wagon or other carriage, the weight whereof exceeds forty-five hundred pounds, exclusive of the team and carriage, and thereby breaks it down or injures it, neither he nor the owner of any property under his charge shall recover any damages against such corporation for his loss or injury. R. S. c. 50, § 3; 79 Me. 565.

If a bridge corporation, or its agent, unreasonably delays or hinders any person driving a cart, wagon, sleigh or other carriage, from passing any toll gate, such corporation forfeits to such person not less than two, nor more than twenty dollars; to be recovered by an action on the case. R. S. c. 50, § 4.

No more than two persons, and children with them not received for the purpose of evading the payment of toll, have a right to pass a toll bridge in any carriage, free of the toll payable by foot passengers in addition to the toll due on the carriage. R. S. c. 50, § 5.

Whoever maliciously breaks down or otherwise destroys or injures any toll gate, or toll bridge, or passes or attempts to pass such gate with intent to avoid the payment of toll, when liable thereto, and it is demanded, forfeits not less than five, nor more than fifty dollars to the proprietors of the bridge, in addition to any actual damages caused by him; but no process shall be maintained to recover such penalty, unless the corporation has complied with its charter, and the bridge is in repair, as public safety and interest require. R. S. c. 50, § 6; 28 Me. 304.

Every toll bridge, if in whole or in part covered, shall be suitably lighted with not less than one sufficient light for every seventy-five feet in length of the covered part, commencing within twenty minutes after sunset, and continuing until ten o'clock in each evening; except at the seasons of the year, if any, when toll is not demanded; and for each evening's neglect or refusal to do so, the corporation forfeits two dollars, to be recovered by an action of debt, in the county where any part of the bridge is

situated, to the prosecutor; and is also liable, in a special action for damages, to any person injured thereby. R. S. c. 50, § 7.

Persons and corporations maintaining covered bridges for public travel, shall keep them snowed at all reasonable times. R. S. c. 50, § 8.

When a toll bridge corporation offers to surrender its bridge, free of cost or encumbrance, to the county commissioners of the county or counties where it is established, and they think it for the public interest and convenience, they shall accept it, and it shall thereafter be the property of such county or counties, and be maintained at their expense; but they shall not so accept a bridge connecting with a way not located and accepted by the town or county where it is situated. Any party aggrieved by the doings of the commissioners, as aforesaid, may have a committee or jury to determine the matter as provided in chapter twenty-three. R. S. c. 50, § 9.

Towns, corporations and individuals, owning ferries and bridges authorized to receive toll, may take and use land within the limits of the highway for the erection and maintenance of toll houses, but not to obstruct the public travel. R. S. c. 50, § 10.

CHAPTER XLII.

GUIDEPOSTS.

Towns shall erect and maintain at all crossings of highways, and where one public highway enters another, substantial guideposts not less than eight feet high, and fasten to the upper end of each a board, on which shall be plainly printed, in black letters on white ground, the name of the next town on the route, and of such other place as the municipal officers direct, with the number of miles thereto, and a figure of a hand with the forefinger pointed thereto; and for any neglect herein, towns are subject to indictment, and fine not exceeding fifty dollars. R. S. c. 23, § 91.

The duty to erect and maintain guideposts devolves primarily with the town. The liability of its officers arises only upon and

after their own neglect. But the municipal officers of a town are not required to furnish funds for the performance of any duty imposed on the town. If they did, it would seem that they could not recover these advances of the town. The town must raise the needed funds. If it has not been done, the selectmen are guilty of no neglect in not erecting guideposts. 72 Me. 286.

The statute imposes a penalty upon towns for not maintaining guideposts at junctions and crossings of highways where one public highway enters another. Roads wholly within a town and merely leading into or connecting with such highways are not within the statute, and towns are not obliged to maintain guideposts where such roads enter highways. 100 Me. 402.

If the municipal officers of any town unreasonably neglect to cause a guidepost to be erected in their town as provided by law, they forfeit five dollars for each month's neglect, to be recovered in an action on the case by any person suing therefor. Plantations assessed in state or county taxes, and their officers, are under the same obligations and subject to the same penalties in these respects as towns. R. S. c. 23, § 92.

Whoever willfully and wantonly or maliciously injures or removes any monument erected, or tree marked as a boundary of any land or town; destroys, defaces or alters the marks thereon, made for the purpose of designating such boundary; injures or defaces any milestone or guideboard erected on a public way or railroad; removes, defaces or injures any sign-board, lamp or lamp post; or extinguishes any lamp on any bridge, street, way or passage, shall be punished by imprisonment for less than one year, and by fine not exceeding one hundred dollars. R. S. c. 128, § 19.

CHAPTER XLIII.

LAW OF THE ROAD.

As used in this chapter, the word "way" includes all kinds of public ways. And the word "team" all kinds of conveyances on such ways for persons and for property. R. S. c. 24, § 1.

When persons traveling with a team are approaching to meet

on a way, they shall seasonably turn to the right of the middle of the traveled part of it, so far that they can pass each other without interference. When it is unsafe or difficult on account of weight of load to do so, a person about to be met or overtaken, if requested, shall stop a reasonable time at a convenient place, to enable the other to pass. R. S. c. 24, § 2.

In turning out they shall use ordinary care and caution, and if one of them, by omitting this care, be injured in his person or property, he is without remedy, and if he injure the other he will be liable to him in damages. 11 Me. 338; 25 Me. 46.

Where two alternatives are presented to a traveler upon the highway as modes of escape from collision with an approaching traveler, either of which might fairly be chosen by an intelligent and prudent person, the law will not hold him guilty of negligence for taking either. 66 Me. 376.

A man may travel in the middle or either side of the road, when no person is passing or about to pass in an opposite direction. 71 Me. 347. A greater care should be exercised by both parties if the night is dark. When darkness exists, each is equally bound to exercise care and prudence under the circumstances. 71 Me. 348.

By the "traveled part of the road" is intended that part of the road which is usually used for traveling. 4 Pick. 126.

When a person with a team is stationary, or traveling slowly on a way at a place unsafe or inconvenient for passing him with a team, he shall, if requested, drive to the right or left, or stop a reasonable time at a convenient place, to allow the other to pass. R. S. c. 24, § 3.

When the road is impassable, the traveler may lawfully pass over the adjoining land. 53 Me. 160.

No person shall leave his team stationary on a way so as to obstruct the free passage of other teams; or allow his team to be on a way without a driver. R. S. c. 24, § 4.

Three or more bells must be fastened to one of the foremost horses drawing teams on snow without wheels. R. S. c. 24, § 5.

Any person injured by a violation of either of previous sections, may recover damages in an action on the case, commenced within one year. Such violator forfeits not less than one, nor more than twenty dollars, to be recovered on complaint made within sixty days. R. S. c. 24, § 6.

No automobile or motor vehicle shall be driven or operated upon any highway, town way, public street, avenue, driveway, park or park way, at a greater rate of speed than fifteen miles an hour, or upon any highway, town way, public street, avenue, driveway, park or park way, within the compact or built up portions of any city, town or village, the limits of which shall be fixed by the municipal officers thereof, at a greater rate of speed than eight miles an hour, except where such city or town may by ordinance or by-law permit a greater rate of speed. R. S. c. 24, § 7.

No person driving or in charge of an automobile or motor vehicle on any highway, town way, public street, avenue, driveway, park or park way, shall drive the same at any speed greater than is reasonable and proper, having regard to the traffic and use of the way by others, or so as to endanger the life or limb of any person; and racing any such vehicle on any such ways or parks is hereby forbidden. R. S. c. 24, § 8.

Every person driving or operating an automobile or motor vehicle shall at request and signal by putting up the hand, or by other visible signal, from a person riding or driving a horse or horses or other domestic animals, cause such vehicle to come to a stop as soon as possible and to remain stationary so long as may be necessary to allow such animal or animals to pass. R. S. c. 24, § 9.

Automobiles are now recognized as legitimate means of conveyance on the public highway. The fact that horses unaccustomed to see them are likely to be frightened by the unusual sound and appearance of them has not been deemed sufficient reason for prohibiting their use, but it is an element in the question of due care on the part of the drivers of both horses and motor cars, and a consideration to be entertained in determining whether such care has been exercised to avoid accident and injury in the exigencies of the particular situation. 103 Me. 255.

Every such automobile or motor vehicle shall have attached thereto a suitable bell or other appliance for giving notice of its approach, which, when rung or otherwise operated, may be heard at a distance of three hundred feet; and shall also carry a lighted lamp between one hour after sunset and one hour before sunrise. R. S. c. 24, § 10.

Municipal officers of any city or town may designate places on any streets or ways therein, where, in their judgment, by

reason of cliffs, embankments or other exceptional natural conditions, the meeting of automobiles or motor vehicles and horses would be attended with unusual danger. Such designation shall be made by causing the words "automobiles—go slow" to be conspicuously displayed on sign-boards at the right hand side of each approach to the place to be designated, and not more than one hundred and fifty feet distant therefrom; and an automobile or motor vehicle, before meeting any horse between such limits, shall be brought to a standstill, and shall not proceed, unless by request of the rider or driver of the horse, until such horse shall have passed; and no such vehicle shall pass any place so designated at a greater speed than four miles an hour. R. S. c. 24, § 11.

Whoever violates any provision of the five preceding sections shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding ten days. R. S. c. 24, § 12.

No team shall travel faster than a walk on a bridge erected wholly or partly by the state, or on any bridge covered with plank and fifty feet long composing part of a way, or on any bridge owned by a corporation, if a board with the words "three dollars fine for riding or driving on this bridge faster than a walk," legibly painted in black letters on a white ground, is kept exposed in some conspicuous place at each end thereof. R. S. c. 24, § 13.

Whoever willfully violates the preceding section, forfeits three dollars, to be recovered on complaint made by any owner of said bridge, or by any municipal officer of the town in which it is located, to the owners of the bridge, or to the town required to keep it in repair; but no person passing after sunset and before sunrise is so liable without proof that he previously had knowledge of such prohibition. R. S. c. 24, § 14.

If the driver of a team having passengers therein conveyed for hire, leaves it without any person in charge and without fastening it securely, he may be fined not exceeding thirty dollars or imprisoned not exceeding one month. R. S. c. 24, § 15.

Teams with wheels, if drawn by more than two horses, oxen or mules, must have the rims of their wheels at least four inches wide, and if drawn by more than four horses, oxen or mules, at least five inches wide, when traveling on the road from Jackson brook, in Washington county, to Forest City, and when traveling on the highway from the spool mill of the Willimantic Linen Company in Willimantic, in Piscataquis county, by the resi-

dences of Irvine Floyd or Jabez Hathaway, to Francis' siding on the Bangor and Aroostook Railroad in Abbot, and when traveling along the road leading from West Buxton in Buxton in York county to the Saco River railroad station, and on the road leading from said West Buxton to the Buxton railroad station, and on the road leading from Bar Mills in Buxton via Duck pond, so-called, to the Gorham town line, and when traveling on the road leading from Newry Corner in the town of Newry, in Oxford county, to the Grand Trunk railway station in Bethel village in the town of Bethel, and when traveling on the road leading from East Bethel in said town of Bethel to Locke's Mills, so-called, in the town of Greenwood, and when traveling on the road leading from the town of Mason in said Oxford county to West Bethel village, and when traveling on any of the streets or roads in said Bethel village; and no team drawn by more than six horses, oxen or mules, shall travel thereon. This section is not applicable to stage or pleasure carriages, or to those owned by the state or the United States, or to any cart or wagon owned by the settlers in the vicinity and used for farming purposes. The owner or driver of a team violating this section, forfeits twenty dollars and one dollar more for each mile of road passed, to be recovered by complaint before a municipal or police court or trial justice in the county where the offense was committed, and on a libel or complaint, he may issue his warrant to seize and detain such team to respond to such fine and cost. R. S. c. 24, § 16.

All automobiles and motor vehicles shall be registered by the owner or person in control thereof in accordance with the provisions of this act. Application for such registration may be made, by mail or otherwise, to the secretary of state upon blanks prepared under his authority. The application shall, in addition to such other particulars as may be required by said secretary, contain a statement of the name, place of residence and address of the applicant, with a brief description of the automobile or motor vehicle, including the name of the maker, the number, if any, affixed by the maker, the character of the motor power and the amount of such motor power stated in figures of horse power; and with such application shall be deposited a registration fee of two dollars. The said secretary shall then register, in a book to be kept for the purpose, the automobile or motor vehicle described in the application, giving to such automobile or motor vehicle a distinguishing number or other mark, and shall thereupon issue to the applicant a certificate of

registration. Said certificate shall contain the name, place of residence and address of the applicant, and the registered number or mark, shall prescribe the manner in which said registered number or mark shall be inscribed or displayed upon the automobile or motor vehicle, and shall be in such form as the secretary may determine. The secretary of state shall also furnish the applicant two enamelled iron plates containing the word "Maine" in letters not less than one inch in height and the number of registration in Arabic numerals not less than four inches in height. The number plates must be attached to the front and back of automobiles and one number plate must be attached to the back of motor cycles. On both automobiles and motor cycles the numbers must be so placed to be always plainly visible. A proper record of all applications and of all certificates issued shall be kept by the secretary of state in his office and shall be open to the inspection of any person during reasonable business hours. The certificate of registration shall always be carried in some easily accessible place in the automobile or motor vehicle described therein. Upon the sale of any automobile or motor vehicle its registration shall expire, and the vendor shall immediately return the certificate of registration to the secretary of state, with notice of sale, and of the name, place of residence and address of the vendee. R. S. c. 24, § 17.

Every manufacturer of or dealer in automobiles or motor vehicles, may instead of registering each automobile or motor vehicle owned or controlled by him, make application upon a blank provided by said secretary of state for a general distinguishing number or mark, and said secretary may, if satisfied of the facts stated in said application, grant said application, and issue to the applicant a certificate of registration containing the name, place of residence and address of the applicant, and the general distinguishing number or mark assigned to him, and made in such form as said secretary of state may determine; and all automobiles and motor vehicles owned and controlled by such manufacturer or dealer, shall, until sold or let for hire or loaned for a period of more than five successive days, be regarded as registered under such general distinguishing number or mark. The fee for every such license shall be ten dollars. R. S. c. 24, § 18.

Licenses for operating automobiles and motor vehicles shall be issued by the secretary of state. Application shall be made upon blanks prepared by the secretary of state for this purpose,

and the licenses issued shall be in such form and shall contain such provisions as said secretary of state may determine. To such licensee shall be assigned some distinguishing number or mark, and a proper record of all applications for license and of all licenses issued shall be kept by the secretary of state at his office, and shall be open to the inspection of any person during reasonable business hours. Each license shall state the time, place of residence of the licensee and the distinguishing number or mark assigned to him. The fee for each license to operate shall be two dollars. All fees shall be deposited at the time of making the application. The secretary of state may at any time suspend or revoke any license for any violation of this act or regulation made thereunder. Before a license to operate is granted, the applicant shall present such evidence as to his qualifications as may be required by the secretary of state. R. S. c. 24, § 19.

Except as otherwise provided herein no automobile or motor vehicle after the first day of June, nineteen hundred and five, shall be operated upon any highway, town way, public street, avenue, driveway, park or park way, unless registered as heretofore provided, and no person shall on or after the first day of June in the year nineteen hundred and five, operate an automobile or motor vehicle upon any highway, town way, public street, avenue, driveway, park or park way, unless licensed to do so under the provisions of this act. R. S. c. 24, § 20.

Automobiles or motor vehicles owned by non-residents of this state and driven by a person licensed in this or in some other state may be operated on the roads and highways of this state unless prohibited by special law or town ordinance duly authorized by the legislature, subject, however, to the provisions of sections seven, eight, nine, ten, eleven, and twelve, and provided that such person shall show in front and at the back of his automobile and at the back of his motor cycle the registration number granted him in such other state, and the name of the other state in Arabic letters at least one inch high. The provisions of this and the preceding sections shall not prevent the operating of automobiles by unlicensed persons if riding with or accompanied by a licensed operator. R. S. c. 24, § 21.

Whoever violates any provision of the five preceding sections shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding ten days. R. S. c. 24, § 22.

CHAPTER XLIV.

STATE ROADS.

The objects of this act are to obtain a more uniform system for the permanent improvement of main highways or state roads throughout the state, to secure the co-operation of the municipalities and the state in providing means therefor, and to provide for more efficient and economical expenditure of moneys appropriated for highway construction and repair. P. L. 1907, c. 112, § 1.

The following described roads shall be considered main highways or state roads within the meaning of this act; in towns which have already availed themselves of the provisions of sections ninety-nine to one hundred and five of chapter twenty-three, revised statutes, nineteen hundred and three, and acts amendatory thereof and additional thereto, such roads as have heretofore been designated state roads by the county commissioners; in towns which have not heretofore availed themselves of said provisions, but which vote to accept the provisions of this act, such roads as may hereafter be designated as state roads. When notified by the state commissioner of highways that any town has voted to accept the provisions of this act, it shall be the duty of the county commissioners of the county in which such town is located, on or before June first of the year of such notification to determine the main traveled thoroughfare of said town and to designate the same as the state road. Said county commissioners shall forthwith return to the state commissioner of highways a record of their proceedings in each town and an accurate, minute and careful description of each road so designated. *Provided, however,* that upon petition of a majority of the legal voters in any town or a majority of the municipal officers of any city presented to the state commissioner of highways stating that in the judgment of the petitioners the road as designated by the county commissioners is not the main traveled thoroughfare in that town and that public convenience would be better served by the designation of

some other road as the state road, which other road must be described in the petition, it shall be the duty of the state commissioner of highways, after such notice as he may order to give a public hearing upon said petition at some convenient place where all parties interested may be heard. The state commissioner of highways, the mayor, or street commissioner or city engineer, if designated by the mayor to act in his stead, in the case of cities; the chairman of the selectmen or one member of the board whom the chairman shall designate, in the case of towns; the chairman of the board of assessors, or one member of the board of assessors who shall be designated by the chairman, in the case of plantations; and a county commissioner from an adjoining county to be chosen jointly by the state commissioner and the representative of the city, town or plantation as provided herein, shall constitute a board to hear said petitions and parties interested and designate the state road, which designation shall be final. County commissioners when hearing said petitions shall receive three dollars per day and expenses, to be paid together with advertising and incidental expenses from the treasury of the county in which the town is located. In case the decision is against the petitioners said board shall order in their decision that the petitioners repay to the county within a fixed time all said costs in connection with the hearing of the petition. In case such payment shall not be made within the time so fixed then the treasurer of the county within which the petition was heard shall commence an action of debt against said petitioners or any of them in the name of the county for the recovery of said costs and expenses. *Provided, further,* that when the state road in any town has been reconstructed in a permanent manner within the meaning of this act it shall be the duty of the county commissioners to designate the next important main thoroughfare as state road. Municipal officers may notify the state commissioner of highways when in their opinion the state road is entirely reconstructed as above, but such notification must be made immediately upon the completion of the road. It shall then be the duty of the state commissioner of highways, together with the county commissioners of the county in which the road is located to make an inspection of the road and to determine whether or not it is complete. If they find the road to be not complete they shall specify to the municipal officers in what particulars, and the municipal officers shall, in their next proposal for expenditure of joint funds, specify that it is desired to use said joint funds in completing

said road according to said specifications returned by the state commissioner of highways and the county commissioners. If the road is complete the county commissioners shall designate another state road as provided in this section. P. L. 1907, c. 112, § 2.

To carry out the provisions of this act there is hereby created and established a state highway department whose chief officer shall be called the state commissioner of highways. Said commissioner shall be a civil engineer and shall be appointed by the governor with the advice and consent of the council, within ten days after this act takes effect. The term of office of said commissioner shall be four years and until his successor is appointed and qualified. He shall receive an annual salary of two thousand five hundred dollars, and in addition thereto such actual expenses, not exceeding fifteen hundred dollars annually, as he may personally incur in the execution of the duties of his office, the same to be approved by the governor and council. Said commissioner shall be furnished with suitable officers at the seat of government properly provided with all necessary furniture, equipment and stationery, and he shall personally superintend the work of the department. Said commissioner may appoint, if the work of the department requires it, subject to the approval of the governor and council, one assistant commissioner who shall be a civil engineer and experienced in road building. Said assistant commissioner shall receive an annual salary not to exceed fifteen hundred dollars and actual expenses incurred when on official business within the state, the same to be approved by the governor and council. He may also appoint one clerk and bookkeeper at a salary not to exceed thirteen hundred dollars and one stenographer at such salary as may be determined upon and approved by the governor and council. He may also employ such other help as the execution of this act shall make necessary upon terms to be approved by the governor and council. All salaries and expenses called for in this section shall be charged against administration except as hereinafter provided. P. L. 1907 c. 112, § 3.

If any city or town or organized plantation or the county commissioners for any unincorporated township desire state aid as contemplated by this act, for the permanent improvement of its state road, such city or town or organized plantation may raise and appropriate in addition to the amounts regularly raised and appropriated for the care of ways, highways and bridges the following amounts, on account of which aid shall be paid.

Towns having a valuation of two hundred thousand dollars or less may appropriate any amount not exceeding two hundred dollars; towns having a valuation over two hundred thousand dollars and not over eight hundred thousand dollars may appropriate any amount not exceeding four hundred dollars; towns having a valuation over eight hundred thousand dollars and less than one million dollars may appropriate any amount not exceeding four hundred fifty dollars; and towns having a valuation over one million dollars and not exceeding three million dollars may appropriate an additional fifty dollars for each two hundred thousand dollars additional valuation or fraction thereof; towns having a valuation of three million dollars and less than four million dollars, may appropriate one thousand dollars; and towns having a valuation of over four million dollars may appropriate an additional one hundred dollars for each one million dollars additional valuation or fraction thereof. And the commissioners of each county within which are located unincorporated townships, if they desire state aid for the permanent improvement of the main thoroughfare or state road of any of said townships, shall raise and appropriate in addition to the amounts regularly raised and appropriated for the care of highways and bridges, in each of said townships, fifty cents for each thousand of valuation of each of said townships for which state aid is desired. And it shall be lawful for any city government to make appropriation in order to secure state aid at any meeting of said city government held between the date of its inauguration and April fifteen. P. L. 1907 c. 112, § 4.

Application for such state aid in any year, and notice of the raising and appropriation of such additional amount called for in the preceding section by any city, town or organized plantation or by the commissioners of such counties as have unincorporated townships entitled to state aid, shall on or before April fifteenth of such year, be made and given to the state commissioner of highways by the clerk of such cities, towns, plantations or boards of county commissioners; except that in the case of cities the time may be extended to June fifteenth. Otherwise they shall not be entitled to such aid for such year. It shall be the duty of the selectmen of each town to insert in the warrant for each annual town meeting an article calling upon the voters to vote "yes" or "no" on the adoption of the provisions of this act relating to the appropriation of money necessary to entitle the town to state aid for highways, for the year in which such meeting is to be held. P. L. 1907 c. 112, § 5.

The state commissioner of highways shall apportion from the amount appropriated under the provisions of this act, to each city, town and organized plantation which has applied for state aid and has appropriated the additional amount provided for in section four, for each dollar so appropriated, the following amounts: To towns having a valuation of two hundred thousand dollars or less, two dollars for each dollar appropriated by said town; to towns having a valuation over two hundred thousand dollars and less than one million dollars, one dollar for each dollar appropriated by said town; to towns having a valuation of one million dollars and less than one million two hundred thousand dollars, ninety-two cents; to towns having a valuation of one million two hundred thousand dollars and not exceeding one million four hundred thousand dollars, eighty-five cents; to towns having a valuation of one million four hundred thousand dollars and not exceeding one million six hundred thousand dollars, eighty cents; and to towns having a valuation of one million six hundred thousand dollars and over, seventy-five cents for each dollar so appropriated under section four. And to unincorporated townships for which the county commissioners have applied and have appropriated the additional amount provided for in section four, there shall be apportioned one dollar for each dollar so appropriated. P. L. 1907 c. 112, § 6.

The amount of money appropriated by such city, town, organized plantation, or for such incorporated township as applies for state aid, as provided for in section four with the amount apportioned by the state commissioner of highways, as provided for in section six, shall constitute a joint fund for the permanent improvement of the state road in each of said cities, towns, organized plantations or unincorporated townships. And on or before May fifteenth of each year it shall be the duty of the officers having jurisdiction over highways in said cities, towns, organized plantations and unincorporated townships to file with the state commissioner of highways a proposal setting forth the location of the state road and nature of the permanent improvements desired to be made; except that in the case of cities the time may be extended to July fifteenth. The state commissioner of highways shall upon receipt of this proposal notify the said officers whether or not the proposed location and the proposed work meets with his approval, and if not, his reasons therefor. No work shall be commenced or prosecuted until the state commissioner of highways has approved the same and issued specifications by which the work must be done. No state aid shall be

paid until all work undertaken has been constructed to his satisfaction. He may also, upon request of the officers of any city not employing a city engineer, or town or organized plantation or unincorporated township, furnish to such city, town, or organized plantation or unincorporated township, free of charge, the services of any engineer or inspector in the employ of the state under this act for the purpose of consultation and advice concerning the construction, improvement and repair of the highways in such city, town, organized plantation or unincorporated township. And any special expenses incurred in providing such engineers or inspectors shall be charged against administration and shall be paid for out of the general appropriation made under this act. A certificate of the cost of every road constructed under the provisions of this act not upon a contract shall be filed with the state commissioner of highways, by the selectmen or authorized authority over the work of the town in which such road shall have been constructed, on or before November first. Survey notes, copies of all plans and contracts together with all other records pertaining to the expenditure of any state moneys under this act or any subsequent act for the improvement of highways shall be filed and remain on record in the office of the state commissioner of highways. Any part of said joint fund not expended during the year for which it is set apart and apportioned, may be expended during the succeeding year. If, in the opinion of the state commissioner of highways, said joint fund or any part thereof, for any year cannot be advantageously expended, the same may be expended the succeeding year. P. L. 1907 c. 112, § 7.

As soon as the location and general character of the proposed work has been determined upon in towns where one thousand dollars or more of joint fund is to be expended under the provisions of this act, it shall be the duty of the state commissioner of highways to make surveys, plans, estimates and specifications for the proposed improvement. These plans and specifications shall conform substantially to the proposal filed under the preceding section and agreed upon between the state commissioner of highways and the selectmen or other officers having jurisdiction over highways. Changes of grade and alignment may be made when the road will be benefited thereby and authority is hereby given to make such changes. Said plans and specifications shall, upon completion, be forwarded to the selectmen or other officers having jurisdiction over highways in the said town in which the particular work is located, whose duty it shall be

to immediately advertise for bids for doing said work according to said plans and specifications in two or more public newspapers, printed or circulated in the county, for three weeks successively, at least once in each week. This advertisement shall state the place where bidders may examine said plans and specifications, and the time and place where the bids for said work will be received by the board of selectmen or other local officers having jurisdiction. Each bidder must accompany his bid with a certified check payable to the treasurer of the city, town, plantation or county as the case may be, for ten per cent of the amount of his bid as a guarantee that if the work is awarded to him, he will enter into a contract with said board for the same. All bids so submitted shall be immediately and publicly read at the time for opening the same, as stated in said advertisement, and referred to the state commissioner of highways for his approval. The selectmen or other local officers having jurisdiction and the state commissioner of highways shall have the right to reject any or all bids, if in their opinion good cause exists therefor, but otherwise they shall award the contract to the lowest responsible bidder. The successful bidder shall give satisfactory evidence of his ability to perform the contract, and shall within fifteen days from the awarding of the contract also furnish bonds in the penal sum of at least one-half of the amount of the contract, with two or more sureties, owners of real estate in the county, or a surety or trust company, authorized to transact business within the state to be approved by both the board receiving the bids and by the state commissioner of highways, conditioned for the faithful performance of said work in strict conformity with the contract, plans and specifications for the same. The contract, plans and specifications shall be executed in triplicate, one copy going to the contractor, one to the local board of officers having jurisdiction and one to the state commissioner of highways. Whenever the mayor and city council or such other board as has jurisdiction over highways in a city, or the selectmen of any town, or the assessors of any organized plantation, or the county commissioners for unincorporated townships, shall desire in behalf of such city, town, plantation or unincorporated township to bid upon work located within said city, town, plantation or unincorporated township, they shall submit their bids to the state commissioner of highways at least one day prior to the time specified for the opening of the other bids as stated in the advertisement for bids, and all bids submitted in behalf of town shall be subject to the require-

ments made and provided for in this section, except that no certified check or bond shall be required of any town or city making bids or accepting contracts for construction. No bids in behalf of towns shall be opened by the state commissioner of highways until after the other bids for the same work shall have been publicly opened and read by the board receiving them, as required by this section, and forwarded to the state commissioner of highways. If the state commissioner of highways shall find from the bids so submitted that the bid in behalf of the town is the lowest, the state commissioner of highways shall thereupon award the contract to such town, whereupon the board of local officers having jurisdiction over highways in such town shall forthwith execute a contract in behalf of such towns with the state commissioner of highways in behalf of the state, to fulfill all the requirements and terms of the specifications and plans for said work, under which their bid was submitted, *provided, however*, that the municipal officers of any city or town may enter into a contract with the state commissioner of highways for the construction of the section of state road within said city or town immediately upon completion of plans and specifications at the estimated cost of construction made by said state commissioner of highways. The state commissioner of highways, on all work executed by contract, shall make such inspection from time to time as he may deem necessary and all material furnished and labor performed shall be to his satisfaction. The state commissioner of highways may appoint inspectors if he deems it necessary to supervise the construction of all roads built by contract under the provisions of this act. He shall prescribe their salaries, which shall be satisfactory to the governor and council; said salaries, however and any special expense incurred in making surveys, plans and layouts for contract work shall be charged against the joint fund for the particular work in question. The inspector shall require all provisions of the contract and specifications to be strictly adhered to by the contractors and immediately after the completion of each contract and before final payment is made the inspector shall make oath that all work has been completed according to contract, plans and specifications. P. L. 1907 c. 112, § 8.

When the municipal officers of any city, town or plantation or the county commissioners for any unincorporated township, which has complied with the foregoing sections shall certify under oath to the state commissioner of highways that the

section of state road in said town has been completed it shall be the duty of the state commissioner of highways, either personally or by his agent to inspect said road and to determine the amount of aid due thereon. The amount of aid found to be due shall be certified to the state auditor, who if he finds said amount correct shall certify the same to the governor and council for payment. Work performed by individuals or corporations, not towns, under contract shall be paid for as follows: At or near the end of each calendar month during the progress of the work the state commissioner of highways shall certify to the selectmen of each town in which such contract work is being performed, the amount and value of the work done on such contract during the month, together with a statement of eighty-five per cent of the value of such work, which shall be the amount due the contractor and payable to him by the town treasurer not later than the fifteenth of the month succeeding the month in which the work was done; *provided, however*, that thirty days after the state commissioner of highways shall certify to the selectmen that all work in connection with any such contract has been completed, inspected and accepted, the full unpaid balance of said contract as shown in said certificate shall be payable to the contractor by the town and not before. P. L. 1907 c. 112, § 9.

Any highway within any city or town improved by the expenditure of said joint fund shall thereafter be maintained, as are other highways, within the city, town, plantation or township within which it is located, and to the satisfaction of the state commissioner of highways. P. L. 1907 c. 112, § 10.

The state shall not be liable to any person or corporation for damages arising from the construction, rebuilding, improvement or maintenance of any highway under this act. In case any person or persons or corporation shall sustain damage by any change in grade or by taking of land to alter the location of any highway which may be improved under this act the person or persons or corporation injured thereby shall be entitled to compensation to be assessed by the officers having jurisdiction where the road lies, said damage to be assessed and paid according to provisions of statute. In case the award of damages is not satisfactory, parties aggrieved shall have the same right of appeal as is provided by law in the case of damages for altering highways. P. L. 1907 c. 112, § 11.

To provide funds for the purposes of this act, there shall be

assessed annually on all property in the state a tax of three-fourths of one mill on each dollar of valuation and the money derived from said tax shall be for the exclusive uses and purposes set forth in this act. Any unexpended balance at the end of any year shall be added to the fund for the next year. From this fund shall be paid all state aid for road improvement as provided for under this act. P. L. 1907 c. 112, § 12.

After providing for the payment of state aid applied for, the balance of the fund or any part thereof may be expended by the state commissioner of highways in rebuilding and improving the main thoroughfares of through travel in the state, with the object of establishing a complete system of continuous main highways throughout the state. The location of roads to be improved under this section and the apportionment of funds for the same shall be determined by the state commissioner of highways subject to the approval of the governor and council. The same general provisions made for the construction and maintenance of other state roads under this act shall apply to roads constructed under authority of this section, except that the whole cost of construction may be paid by the state. P. L. 1907 c. 112, § 13.

The fiscal year for the purposes of this act shall end December thirty-one. Wherever the word "valuation" is used in this act it shall mean the valuation last made by the state board of assessors. Wherever the word city, town or organized plantation or unincorporated township is used singly in this act and the phrase or clause in which it is used could as well apply to all four classes of political subdivisions or to any other one class it shall be understood to so apply. P. L. 1907 c. 112, § 14.

In connection with the foregoing duties the state commissioner of highways, having first regard for the performance of those duties, shall also compile statistics relating to the public ways in the cities and towns of the state, and make such investigation relating thereto as he shall deem expedient, in order to secure better and more improved highways in the state. He shall also by means of maps, charts, cuts, drawings, prints, publications, printed or written articles, lectures, or otherwise, disseminate knowledge throughout the state concerning the best known economical methods for the building and maintaining of highways, including bridges, in the cities and towns of the state, and particularly to impart such information, in manner as aforesaid, to the county commissioners of counties, the street commis-

sioners of cities, the selectmen of towns and other municipal officers whose duties it may be to have the care and management of the expenditure of money and the building and keeping in repair of the highways in the state. Said commissioner shall hold each year under the auspices of the county commissioners, a meeting in each county for the open discussion of questions relating to the building and maintaining of public ways, of which due notice shall be given to the towns and cities in each county by the said county commissioners. P. L. 1907 c. 112, § 15.

The state commissioner of highways shall make an annual report to the governor and council of the operations of the state highway department. This report shall show the number of miles, cost and character of the roads built under its direction, together with a statement of expenses of the department and such other information concerning the condition of public roads of the state and the progress of their improvement as may be proper. He shall also make recommendations for any legislation which to him seem expedient and necessary. His report shall be transmitted to the secretary of state as soon after the first Wednesday of January of each year as possible. P. L. 1907 c. 112, § 16.

County commissioners and city and town officers having the care of and authority over public ways and bridges throughout the state shall, on request furnish said commissioner any information which they may possess and required by him, concerning ways and bridges within their jurisdiction. P. L. 1907 c. 112, § 17.

Sections ninety-nine to one hundred and five inclusive of chapter twenty-three, revised statutes of nineteen hundred and three and acts amendatory thereof, and chapter one hundred and forty-six of the public laws of nineteen hundred and five are hereby repealed when this act takes effect. P. L. 1907 c. 112, § 18.

This act shall take effect January first, nineteen hundred and eight. P. L. 1907 c. 112, § 19.

CHAPTER XLV.

RAILROADS AND STREET RAILROADS.

A railroad corporation for the location, construction, repair and convenient use of its road may purchase, or take and hold, as for public uses, land and all materials in and upon it; through woodland and forest the land so taken shall not exceed six rods in width unless necessary for excavation, embankment or materials, and through all land other than woodland and forest, the land so taken shall not exceed four rods in width unless necessary for excavation, embankment or materials. R. S. c. 51, § 24; 35 Me. 258; 40 Me. 556; 41 Me. 220; 47 Me. 46, 347; 51 Me. 320; 59 Me. 535; 66 Me. 38, 46; 67 Me. 360; 77 Me. 602; 83 Me. 277; 84 Me. 39; 86 Me. 130.

The railroad shall be located within the time and substantially according to the description in its charter; and the location shall be filed with the county commissioners, who shall indorse the time of filing thereon and order said location recorded. When a corporation, by its first location, fails to acquire the land actually embraced in its roadway, or the location as recorded is defective or uncertain, it may, at any time, correct and perfect its location, and file a new description thereof; and in such case it is liable in damages, by reason of such new or amended location, only for land embraced therein for which the owner had not previously been paid. Any subscriber to the stock, alleging that it has not been located according to its charter, may, before payment of his subscription, make written application to the county commissioners in the county where the deviation is alleged, stating it, who after fourteen days' notice to the corporation, and upon a view and hearing, shall determine whether it has been located as required; if they determine that it has been, no such defense shall be made to any process to enforce payment; if they determine that it has not, the subscription of such applicant is void. The prevailing party recovers costs. Provisions in railroad charters, whenever granted, limiting the time within which such railroad shall be

completed, shall not affect the portion thereof completed within such time; and all charters under which railroads have been constructed for a portion of the line authorized thereby are confirmed and made valid as to such portion. R. S. c. 51, § 25; 59 Me. 536; 83 Me. 277; 97 Me. 47.

Any railroad corporation may also purchase or take and hold, as for public uses, additional land at any time required for the purpose of improving the alignment of its road, or for double tracking its road, also land for borrow and gravel pits, necessary tracks, side tracks, stations, coal sheds, wood sheds, repair shops, and car, engine and freight houses; but if the owner of said land does not consent thereto, or if the parties do not agree as to the necessity therefor or the area necessary to be taken, the corporation may make written application to the railroad commissioners, describing the estate, and naming the persons interested; the commissioners shall thereupon appoint a time for the hearing near the premises, and require notice to be given to the persons interested, as they may direct, fourteen days at least before said time; and shall then view the premises, hear the parties and determine how much, if any, of such real estate is necessary for the reasonable accommodation of the traffic and appropriate business of the corporation. If they find that any of it is so necessary, they shall furnish the corporation with a certificate containing a definite description thereof; and when such certificate is filed with the clerk of courts in the county where the land lies, the land shall be deemed and treated as taken; *provided, however*, that when land is held by a tenant for life, and the reversion is contingent as to the persons in whom it may vest on the termination of the life estate, such fact shall be stated in the application, and the commissioners shall, in addition to the notice to the tenant for life, give notice by publication to all others interested, in such manner as they deem proper. R. S. c. 51, § 26; 66 Me. 38-46; 84 Me. 39; 85 Me. 67.

Any railroad corporation, under the direction of the railroad commissioners, may make any changes in the location of its road which it deems necessary or expedient, and such changes shall be recorded where the original location was required by law to be recorded. R. S. c. 51, § 27.

Any railroad corporation may purchase, or take and hold, as for public uses, land and materials necessary for making any changes authorized by the preceding section, in the manner

authorized by its charter or the general provisions of law, and may cross highways and town ways in accordance with the provisions of law regulating such crossings. R. S. c. 51, § 28.

The land taken shall not be entered upon, except to make surveys, before the location has been filed, and the damages estimated and secured as hereinafter provided; and no railroad corporation shall take, without consent of the owners, meeting-houses, dwelling-houses or public or private burying grounds. R. S. c. 51, § 29; 47 Me. 443; 66 Me. 40.

Any railroad corporation, under the direction of the railroad commissioners, may locate, construct and maintain branch railroad tracks to any railroad station of another corporation or to connect with another railroad, or, to any mills, mines, quarries, gravel pits, log landing or yard or manufacturing establishments erected in any town or township, through which the main line of said railroad is constructed, but not within any city without the consent of the city council, and for that purpose said corporation shall have all the powers and rights granted, and be subject to all the duties imposed upon it by its charter. R. S. c. 51, § 30; 83 Me. 277.

For location and assessment of damages for taking property for public uses, see chapter thirty-five, Town Ways and Private Ways.

A city or town by a two-thirds vote, at any legal meeting called for the purpose, may raise by tax or loan, from time to time, or all at once, a sum not exceeding in all five per cent on its regular valuation for the time being, to aid in the construction of railroads, in such manner as it deems proper, and for such purpose may contract with any person or railroad corporation. At such meetings the legal voters shall ballot, those in favor of the proposition, voting "Yes," and those opposed, voting "No." The ballots cast shall be sorted, counted and declared in open town meeting, and recorded, and the clerk shall make return thereof to the municipal officers, who shall examine such return, and if two-thirds of the ballots cast, are in favor of the proposition, said officers shall forthwith proceed to carry the same into effect. R. S. c. 51, § 4; 67 Me. 298.

A city or town raising money by loan as aforesaid or under authority conferred by special act of the legislature, shall raise and pay or fund besides the interest, each year after the third, not less than three per cent of the principal. Any city or town

receiving money, bonds, certificates of indebtedness or other evidence of debt in consideration of exchange, release or sale of its securities held to indemnify said city or town for having loaned its credit, or issued its bonds in aid of any railroad shall hold such money, bonds, certificates of indebtedness, or other evidence of debt or the proceeds thereof as a trust fund to liquidate such outstanding liabilities so long as they may continue. R. S. c. 51, § 42.

Meetings for the purposes aforesaid in cities, shall be called by the municipal officers, on the order of common council, like meetings for the election of city officers; and said council shall set forth in their order the substance of the proposition to be inserted in the warrant. At such meetings, the voters shall vote in wards by ballot, those in favor of the proposition in the warrant voting "Yes," and those opposed, voting "No," and the ballots cast shall be sorted, counted and declared in open ward meeting and recorded; the clerks shall make returns thereof to the municipal officers, who shall examine the same; and if two-thirds of the ballots cast are in favor of the proposition, said officers shall forthwith proceed to carry it into effect. Lists of voters for use at such meetings shall be prepared in the same manner as for meetings for elections of town or city officers, and such lists shall be used at all meetings held under this section and section forty-one. R. S. c. 51, § 43.

Whenever a city or town has voted at any legal meeting thereof upon any question of loaning its credit to, or taking stock in, or in any way aiding any person or corporation, said city or town shall not vote again upon the same subject, except at its annual meetings. R. S. c. 51, § 44.

When a city or town holds stock in a railroad, the municipal officers thereof, or an agent appointed by them in writing, may vote thereon at any meeting of the corporation. R. S. c. 51, § 45.

Whenever any city or town in the state, in its corporate capacity, holds one-fifth, or more, of the shares in the capital stock of any railroad incorporated by the legislature, any citizen thereof, being a freeholder and resident therein, is eligible as a director of such railroad company. R. S. c. 51, § 46.

For statutes relating to temporary crossings over railroads for lumbering purposes, see chapter thirty-seven, Power of County Commissioners Relating to Town Ways.

Railroads may cross highways or town ways in the line of

the railroad, but cannot pass along them without leave of the town, but when a railroad is hereafter laid out across a highway or other public way, it shall be constructed so as to pass either over or under such way, unless the railroad commissioners after notice and hearing authorize a crossing at grade. Before entering upon the construction of any railroad, the manner and conditions of crossing shall be determined as provided by section twenty-nine of chapter twenty-three. But no crossing of a street in a city, not a highway, shall be made without the written consent of the mayor and aldermen. Crossings not so made are nuisances, and may be so treated, and the directors of railroad corporations making them, are personally liable. R. S. c. 51, § 65; 45 Me. 563; 49 Me. 11, 121, 156; 51 Me. 315; 57 Me. 134; 58 Me. 47; 65 Me. 292; 77 Me. 602; 78 Me. 67; 87 Me. 249.

Highways and other ways may be raised or lowered, or the course of the same may be altered to facilitate a crossing or to permit a railroad to pass over or under the same or at the side thereof, on application to the railroad commissioners, and proceedings as provided by section twenty-nine of chapter twenty-three; and for such purposes land may be taken and damages awarded as provided for laying out highways and other ways. The railroad commissioners may prescribe the manner in which the work shall be done by the corporation. While the use of any way is thereby obstructed, a temporary way shall be provided by the corporation. R. S. c. 51, § 66; 38 Me. 30; 49 Me. 121, 157; 87 Me. 253.

When the corporation unnecessarily neglects to perform the acts so required, those injured may recover damages in an action on the case, commenced within one year after performance is required. R. S. c. 51, § 67; 49 Me. 126; 51 Me. 315; 67 Me. 357.

A railroad may be carried over or under a canal or railroad in such manner as not unnecessarily to impede the travel or transportation on them. The corporation making such crossing is liable for damages occasioned thereby in an action on the case. Bridges and their abutments, constructed for a crossing of any way, shall be kept in repair by the corporation, or by persons or parties running trains on any railroad crossing a highway or town way. The municipal officers of any city or town may give notice in writing to such persons, parties or corporations, that a bridge required at such crossing has not

been erected, or is out of repair, and not safe and convenient, within the requirements of section fifty-six of chapter twenty-three, or that the crossing of any such highway or town way passing such railroad at grade, within their respective cities or towns, is not made or maintained safe and convenient, as required by said section; and such persons, parties or corporations, shall erect or repair such bridge, or make such crossing safe and convenient, as aforesaid, within ten days from the service of said notice; and if they neglect so to do, any one of said municipal officers may apply to any justice of the supreme judicial court, in term time or vacation, to compel such delinquents to erect or repair such bridge, or make such crossing, as aforesaid; and after hearing, such justice or court may make any order thereon which the public convenience and safety require, and may, by injunctions compel the respondents to comply therewith; or said officers may, after ten days from the service of such notice, cause necessary repairs to be made, and the expense thereof shall be paid by the persons, parties or corporations whose duty it is to keep such crossing safe and convenient. R. S. c. 51, § 68; 97 Me. 155.

Every railroad corporation shall erect and maintain suitable bridge guards at every bridge or other structure, any portion of which crosses the railroad less than twenty feet above the track; such guards must be approved by the railroad commissioners, and be erected and adjusted to their satisfaction. Any corporation refusing or neglecting to comply with this section, for each month of continuance in such neglect or refusal, forfeits fifty dollars; and whoever willfully destroys or breaks any such bridge guard forfeits not exceeding one hundred dollars, and may be imprisoned not exceeding thirty days. R. S. c. 51, § 69.

Every railroad corporation shall cause sign-boards with the words "railroad crossing" distinctly painted on each side thereof in letters plainly legible, to be placed and constantly maintained at the side of highways and town ways where they are crossed at grade by such railroads, on posts or other structures, in such position as to be easily seen by persons passing upon such ways; and every such corporation shall cause a steam whistle, and a bell of at least thirty-five pounds in weight to be placed on each locomotive used upon its railroad, and such whistles, or in cities and villages, such bell, shall be sounded as a warning at a distance of one hundred rods on standard gauge railroads and a distance of seventy-five rods on narrow gauge railroads from all crossings of such ways on the same level; and such bell shall be

rung at a distance of eighty-five rods on standard gauge railroads and sixty rods on narrow gauge railroads, from such grade crossings, and be kept ringing until the engine has passed the same; *provided, however*, that upon petition of ten or more legal voters of the state, after notice to the railroad corporation and a public hearing, the board of railroad commissioners may in writing order such corporation to give additional warning to travelers upon such ways by requiring the sounding of such whistles or the ringing of such bells at other places where said railroads cross such public ways other than at grade or run contiguous thereto, and such orders shall have the same force and place the same obligations upon railroad corporations as when required under the provisions of this section. R. S. c. 51, § 70.

When the municipal officers of a town deem it necessary for the public safety, that gates should be erected across a way where it is crossed by a railroad, and that a person should be appointed to open and close them, they may make such request in writing; and in case of neglect or refusal they may apply to the railroad commissioners to decide upon the reasonableness of such request, who after notice and hearing, shall decide. When they decide that such a request is reasonable, or that at said crossing a flagman or automatic signals are necessary for the public safety, they may, upon said application, order a flagman to be stationed or automatic signals to be maintained there instead of gates, and the corporation shall comply with such order and pay the costs; when they decide otherwise, the costs shall be paid by the applicants. R. S. c. 51, § 71.

For unnecessarily neglecting to comply with any provision of the two preceding sections, the corporation forfeits not exceeding five hundred dollars. Any person, whose duty it is to open or close such gates for the passage of an engine or traveler on a way, neglecting to do so, forfeits not exceeding fifty dollars. The corporation is liable for damages for its neglect to comply with these provisions, or for the neglect of any agent, or for the mismanagement of an engine, to be recovered in an action on the case by the person damaged thereby. R. S. c. 51, § 72; 57 Me. 134.

The board of railroad commissioners shall determine the manner and conditions of one railroad of any kind crossing another. Any corporation or party operating such railroad may apply to said board for a change in the then existing condition, construction or manner of any such crossing. Such application shall be

in writing, giving the location of the crossing, and said board shall give a hearing thereon, after they have ordered such notice to be given by the applicants, as to the time, place and purposes of such hearing, as said board shall deem proper. Said board shall determine at such hearing what changes, if any, are necessary, and how such crossings shall be constructed and maintained, the expense thereof to be borne as the railroad commissioners may order. R. S. c. 51, § 73; 89 Me. 334, 563.

In the case of a railroad company of any kind whose tracks are to be constructed across the tracks of any railroad already built, such crossings shall be made, constructed and maintained in such manner and under such conditions as shall be ordered by the board of railroad commissioners, the expense thereof to be borne as the railroad commissioners may order. The parties contemplating making such crossing shall apply to the railroad commissioners in writing, giving the location of the crossing desired, and said commissioners shall give a hearing thereon after they shall have ordered such notice to be given by the applicants of the time, place and purposes of such hearing as said board shall deem proper. At such hearing the board of railroad commissioners shall determine the manner and conditions of construction and maintenance of such crossing and make their report as hereinafter provided. R. S. c. 51, § 74; 89 Me. 334.

Bridges erected by any municipality, over which any street railroad passes, shall be constructed and maintained in such manner and condition, as to safety, as the board of railroad commissioners may determine. Said board may require the officers of the railroad company and of the municipality to attend a hearing in the matter, after such notice of the hearing to all parties in interest as said board may deem proper. Said commissioners shall determine at such hearing the repairs, renewals or strengthening of parts, or if necessary, the manner of rebuilding such bridge, required to make the same safe for the uses to which it is put. They shall determine who shall bear the expenses of such repairs, renewals, strengthening or rebuilding, or they may apportion such expense between the railroad company and the city or town, as the case may be, in such manner as shall be deemed by the board just and fair, and shall make their report as hereinafter provided. R. S. c. 51, § 75.

The board of railroad commissioners shall make a report in writing of their decision in all matters named in the three pre-

ceding sections, file the same in their office, and cause a copy of such decision to be sent by mail to each of the railroad corporations, or the municipal officers of the cities or towns as the case may be, interested therein. Such decision shall be final and binding upon all parties named, unless an appeal therefrom shall be taken and entered in the next succeeding term of the supreme judicial court, to be held in the county where the crossing or bridge is located, after thirty days from the date of the report. R. S. c. 51, § 76; 89 Me. 334.

If any appeal shall be taken as provided in the preceding section, the appellant shall within thirty days from the date of the filing of such decision, file in the office of the board of railroad commissioners, its reasons of appeal, and fourteen days at least before the sitting of the appellate court, it shall cause a copy of such reasons, certified by the clerk of the board of railroad commissioners, to be served upon such other interested corporation or municipality. The presiding justice, at such term of court, shall make such order or decree thereon as law and justice may require. Exceptions may be taken to such order or decree. The final adjudication shall be recorded by the clerk of courts in the county where the crossing or bridge is located, and a copy of the same shall be certified by said clerk to the board of railroad commissioners for record in their office. Costs may be taxed and allowed to either party at the discretion of the court. R. S. c. 52, § 77.

Whenever any railroad company of any kind, whose tracks are to be constructed across the tracks of any railroad already built, shall apply to the railroad commissioners to determine in what manner and under what conditions such crossings shall be made, constructed and maintained and how the expense thereof shall be borne and an appeal is taken from the decision of the railroad commissioners thereon, the board of railroad commissioners may, if they find that public necessity and convenience require it, notwithstanding said appeal, determine the manner and conditions of construction and maintenance of such crossing during the pendency of said appeal or of any legal proceedings that may delay final decree on said application and shall issue the necessary temporary decree therefor. R. S. c. 52, § 78.

Duties of railroad companies in the prevention of forest fires. R. S. c. 7, §§ 60-62.

Ways may not be located over land of railroad company without notice to company. R. S. c. 23, § 28.

Railroad commissioners to determine whether crossing shall be at grade or not; and whether way shall be laid out across land used for station purposes. R. S. c. 23, §§ 29 and 31.

Railroad companies may be notified and take upon themselves defense of action for damages at crossing. R. S. c. 23, § 80.

CHAPTER XLVI.

OPERATING RAILROADS.

Where a railroad passes through enclosed or improved land, or wood lots belonging to a farm, legal and sufficient fences shall be made on each side of the land taken therefor, before the construction of the road is commenced, and such fences shall be maintained and kept in good repair by the corporation. For any neglect of such duty during the construction of the road, and for injuries thereby occasioned by its servants, agents or contractors, the directors are jointly and severally personally liable. For any subsequent neglect, the corporation shall be fined a sum sufficient to make or repair the fence, to be recovered by indictment and expended by an agent appointed by the court therefor. R. S. c. 52, § 26; 29 Me. 308; 39 Me. 276; 46 Me. 166; 59 Me. 534; 60 Me. 243; 63 Me. 309; 65 Me. 338; 82 Me. 124; 87 Me. 306; 87 Me. 327.

The owner of any enclosed or improved land or wood lot belonging to a farm abutting upon any railroad which is finished and in operation, may at any time between the twentieth day of April and the end of October, give written notice to the president, treasurer, or either of the directors of the corporation owning, controlling or operating such railroad, that the line fence against his land has not been built, or if built, that the same is defective and needs repair. And if said corporation neglects to build or repair such fence, for thirty days after receiving such notice, it forfeits to such owner one hundred dollars, to be recovered in an action on the case. R. S. c. 52, § 27; 39 Me. 276; 60 Me. 244; 82 Me. 124.

Whoever takes down or intentionally injures any fence, erected to protect the line of any railroad, or turns any horse, cattle or other animal, upon or within the enclosure of such railroad, shall be fined not less than ten, nor more than one hundred dollars, or imprisoned not less than ten days nor more than six months. R. S. c. 52, § 28.

The corporation is liable for trespasses and injuries to lands and buildings adjoining or in the vicinity of its road, committed by a person in its employment, or occasioned by its order, if the party injured within sixty days thereafter, gives notice thereof to the corporation; but its liability does not extend to acts of willful and malicious trespass. The person committing a trespass is also liable. R. S. c. 52, § 29.

No train of passenger cars, moved by steam, shall be run without one trusty and skillful brakeman to every two cars. R. S. c. 52, § 70; 101 Me. 469.

No car disconnected from a train, shall be left or permitted to remain standing on the main track of any railroad, unless accompanied by danger signals, such as flagging by day and lanterns by night, placed at such distances from such obstruction, on the main line of the road, as will insure safety to and from moving trains, and such signals shall be in charge of and constantly attended by employees of the corporation owning or operating the road. R. S. c. 52, § 71.

A railroad corporation violating any provision of the preceding section, forfeits for each offense, one hundred dollars to the state, to be recovered in an action on the case, or by complaint and indictment; and the attorney general shall prosecute therefor. Said section does not apply to street railroads. R. S. c. 52, § 72.

When a building or other property is injured by fire communicated by a locomotive engine the corporation using it is responsible for such injury, and it has an insurable interest in the property along the route, for which it is responsible, and may procure insurance thereon. But such corporations shall be entitled to the benefit of any insurance upon such property effected by the owner thereof less the premium and expense of recovery. The insurance shall be deducted from the damages, if recovered before the damages are assessed, or, if not, the policy shall be assigned to such corporation, which may maintain an action thereon, or prosecute, at its own expense, any action already commenced by the insured, in either case with all the rights which the insured originally had. R. S. c. 52, § 73; 37 Me. 94;

42 Me. 583; 46 Me. 114; 47 Me. 524; 58 Me. 85; 60 Me. 300; 63 Me. 296; 74 Me. 424; 76 Me. 274; 78 Me. 417, 480; 85 Me. 505; 86 Me. 422; 87 Me. 412; 90 Me. 156; 91 Me. 95; 93 Me. 58; 94 Me. 173; 165 U. S. 13.

Whoever, having charge of a locomotive engine, or acting as conductor, brakeman, motorman or switchman, is intoxicated while employed on a railroad, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months. R. S. c. 52, § 74.

Any person employed in conducting trains who is guilty of negligence or carelessness causing an injury, shall be punished by imprisonment in jail not exceeding one year, or by fine not exceeding one thousand dollars; but the corporation employing him is not thereby exempt from responsibility. R. S. c. 52, § 75; 43 Me. 270; 57 Me. 218; 63 Me. 70.

No railroad corporation shall be liable for the death of a person walking or being on its road contrary to law, or to its valid rules and regulations. R. S. c. 52, § 76.

Whoever without right, stands or walks on a railroad track or bridge, or passes over such bridge except by railroad conveyance, forfeits not less than five, nor more than twenty dollars, to be recovered by complaint; and whoever, without right, enters upon any railroad track with any team, or any vehicle however propelled, or drives any team or propels any vehicle upon any railroad track, shall be punished by fine of not less than fifty dollars, or by imprisonment not less than thirty days. R. S. c. 52, § 77; 100 Me. 568.

A printed copy of the preceding section shall be kept posted in a conspicuous place in every railroad passenger station; for neglect thereof, the corporation forfeits not exceeding one hundred dollars for every offense. R. S. c. 52, § 78.

Any person, other than a servant or employee of the road, or a passenger holding a ticket for a passage over the same, or mail agent or expressman, who gets upon or leaves any steam engine, tender or car at any place outside of a railroad station, while such engine, tender or car is in motion, shall be imprisoned not exceeding thirty days, or fined not exceeding ten dollars; but this provision does not affect the liability of any railroad corporation for injuries or damages caused by the fault or negligence of the corporation or its servants. R. S. c. 52, § 79.

Whoever behaves in a disorderly or riotous manner while on

any train of railroad cars, street railroad car, steamboat or ferry, or uses indecent or profane language in such car, steamboat or ferry, is guilty of a breach of the peace and shall be fined not less than five, nor more than five hundred dollars, or imprisoned in jail not less than thirty days nor more than one year, in addition to any other penalty provided by law. R. S. c. 52, § 80; 87 Me. 393.

The conductor of a train of cars on any railroad or of a street railroad car, or the officer in charge of any steamboat or ferry, may arrest and temporarily hold any person guilty of such a breach of the peace until a warrant can be obtained or he can be placed in the custody of the proper officers of the law. R. S. c. 52, § 81.

Every railroad corporation operating a railroad or part of a railroad in the state, shall adjust, fill or block the frogs and guard rails on its track, with the exception of guard rails on bridges, in a manner satisfactory to the board of railroad commissioners, so as to prevent the feet of the employees from being caught therein. Any railroad corporation failing so to do, shall be punished by a fine of not less than one hundred, nor more than five hundred dollars. R. S. c. 52, § 82; 93 Me. 80.

No passenger, mail or baggage car on any railroad in the state shall be heated by any method of heating or by any furnace or heater, unless such method or the use of such furnace or heater shall first have been approved in writing by the board of railroad commissioners; *provided, however*, that in no event shall a common stove be allowed in any such car; and *provided also*, that any railroad corporation may, with the permission of said board, make such experiments in heating their passenger cars as said board may deem proper. R. S. c. 52, § 83.

No passenger car on a railroad shall be lighted by naphtha, nor by an illuminating oil or fluid made in part of naphtha, or which will ignite at a temperature of less than three hundred degrees Fahrenheit. R. S. c. 52, § 84.

Any railroad corporation violating any provision of the two preceding sections forfeits not exceeding five hundred dollars. R. S. c. 52, § 85.

No engine or train shall be run across a highway near the compact part of a town at a speed greater than six miles an hour, unless the parties operating the railroad maintain a flagman, or a gate or automatic signals ordered or approved by the railroad

commissioners, at the crossing of such highway. And no way shall be unreasonably and negligently obstructed by engines, tenders or cars. The corporation forfeits not exceeding one hundred dollars for every such offense. R. S. c. 52, § 86; 59 Me. 190; 80 Me. 430; 81 Me. 267; 87 Me. 547; 101 Me. 479.

Every railroad company running express trains in this state, shall place safety switches of an approved sort at every siding connecting with the main track; switch lights shall also be maintained throughout that portion of every railroad where trains are run after dark. R. S. c. 52, § 87.

Whoever, without authority, shall alter, change, or in any manner interfere with any safety switch or switch lights on any railroad, shall be liable to a fine of not less than one hundred dollars, or imprisonment for not less than sixty days. R. S. c. 52, § 88.

Whoever intentionally and without right injures, destroys or molests any signal of a railroad corporation, or any line, wire, post, lamp or other structure or mechanism used in connection with any signal on a railroad, or destroys or in any manner interferes with the proper working of any signal on a railroad, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years. R. S. c. 52, § 89.

When one railroad crosses another on the same grade, every engineman on both, when approaching the point of intersection, with an engine with or without a train, shall stop his engine within five hundred feet of such point and before reaching it, and shall pass it at a rate not exceeding eight miles an hour, except when from the condition of the track or train it shall be necessary to run at greater speed; in which case the conductor or person in charge of the train shall station some person at said crossing, with a flag by day and a lantern by night, to warn trains approaching on the other road; but when two or more crossings on the same road are within four hundred feet of each other, one stop is sufficient; any such engineman, conductor, or person in charge of the train violating this provision forfeits, for each offense, one hundred dollars, and the corporation on whose road the offense is committed forfeits two hundred dollars. R. S. c. 52, § 90.

When railroads cross each other at grade, the parties operating the railroad last located there, shall build and maintain a suitable signal station at such crossing, at which a competent signal officer shall be kept at the joint expense of the parties operating

the railroads. The signal shall not be set for a train to cross, until the engine of such train shall have arrived within five hundred feet of the intersection and stopped; and no train or engine shall cross the track of the other road, until the proper signal for it to cross shall have been set in position by the signal officer. Only one train or engine shall be allowed to cross under one setting of the signal unless coming from opposite directions on the same railroad. When the signal has been set for the trains on one of the railroads, it shall not be changed until those trains shall have passed entirely over the crossing. When trains on both railroads approach the crossing at about the same time, preference shall be given to passenger trains and the signal shall be set for the trains on each road in alternate order. R. S. c. 52, § 91.

The board of railroad commissioners may, on the application of any railroad corporation whose road crosses another railroad at the same level, after due notice and hearing of the parties, authorize the applicant to establish and maintain a system of interlocking or automatic signals, at any crossing of said roads, at its own expense, and erect and maintain the necessary wires, rods, signal posts and signals, in such manner as the board shall prescribe. And when such system is established, and has been approved in writing by said board, the corporation establishing the same, and its railroad, shall be excepted, as to that crossing, from the provisions of the two preceding sections, so long as the railroad commissioners shall continue their approval. R. S. c. 52, § 92; 89 Me. 563.

Whenever, after the establishment and approval of such system of signals, the party owning or operating said other railroad at such crossing shall have paid to the corporation by which said signals were established such part of the cost for establishing the same as shall, after hearing on petition of the party owning or operating said other railroad, be awarded by the board of railroad commissioners, both railroads shall be excepted, as to that crossing, as provided in the preceding section, from the provisions of sections ninety and ninety-one. Until such payment said other railroad corporation shall contribute toward the expense of operating said signals, in semi-annual payments, a sum equal to the cost to it of operating the signals used by it at said crossing before the establishment of the signals herein provided for. After payment of the award aforesaid the expense of maintaining and operating the same shall be borne by the two railroad corporations according to the

proportions fixed by the award for paying the original cost of the signals. And said award, so far as it relates to the cost of maintaining and operating said signals, may, at the request of either party, be revised after an interval of five years from the original award or from the award next preceding such request. R. S. c. 52, § 93.

No railroad company shall construct or maintain a track, or run an engine or cars on a street or highway so near any station of another railroad as to endanger the safety and convenient access to and use of such station for ordinary station purposes. R. S. c. 52, § 94; 65 Me. 123.

CHAPTER XLVII.

STREET RAILROADS.

All street railroad corporations shall, in addition to their chartered rights, have all the rights and powers conferred from time to time by general laws upon street railroad corporations, and be subject to the conditions, restrictions and limitations thereby imposed. R. S. c. 53, § 1.

Any number of persons not less than five, a majority of whom shall be citizens of this state, may form a company for the purpose of constructing, maintaining and operating by electricity, compressed air or animal power, a street railroad for public use, for street traffic for the conveyance of persons and property, and for that purpose may make and sign articles of association in which shall be stated the name of the company, the gauge of the road, the places, cities and towns from which, in which and to which the road is to be constructed, maintained and operated, the length of such road, as nearly as may be, the amount of capital stock which shall not be less than four thousand dollars for every mile of road proposed to be constructed, the number of shares of which said stock shall consist, and the names and places of residence of at least three persons, a majority of whom shall be citizens of this state who shall act as directors of the proposed company, and manage its affairs until others are chosen in their places. Each subscriber shall sign his

name, residence and number of shares which he agreed to take in said company. R. S. c. 53, § 2; 96 Me. 113.

Said articles of association shall not be filed and recorded in the manner provided in the following section, until the capital stock named in the preceding section has been subscribed thereto, in good faith, by responsible parties, and five per cent paid thereon in cash, to the directors named in said articles, nor until there is indorsed thereon or annexed thereto, an affidavit made by a majority of the directors named therein, that the amount of stock required by the preceding section, has been in good faith subscribed, and five per cent paid thereon in cash as aforesaid, and that it is intended in good faith to construct, maintain and operate the road mentioned in such articles, which affidavit shall be recorded therewith as aforesaid. R. S. c. 53, § 3; 96 Me. 113.

If a street railroad corporation organized under chapter fifty-three of the revised statutes of Maine, in preparing its location under section seven of said chapter, finds that the length of road intended to be constructed by it, exceeds the length of road as set forth in its articles of association, it may by a petition signed by all of its directors, addressed to the railroad commissioners, and upon such notice as said commissioners may deem necessary, amend said articles of association by providing for such additional length of road, and by increasing the amount of its capital stock to the amount required by section two of said chapter. Such increase in capital stock shall be subscribed for in good faith by responsible parties and five per cent paid thereon in cash to the directors. An additional affidavit shall be endorsed thereon or annexed thereto made by a majority of the directors, that said additional capital stock has been in good faith subscribed and five per cent paid thereon in cash as aforesaid, and that it intends in good faith to construct, maintain, and operate the additional length of road provided for by said amendment. Said amendment shall be subject to approval by the railroad commissioners, as provided by section four of said chapter, in reference to the original articles of association. P. L. 1907 c. 94, § 1.

No amendment shall be necessary so long as the length of approved location does not exceed the length of road as specified in the articles of association. P. L. 1907 c. 94, § 2.

After said amendment has been approved and recorded by said railroad commissioners, it shall be recorded in the office of the secretary of state and certificate of said amendment shall be

issued by said secretary to said corporation upon payment to said secretary of such additional fee if any, as would have been required if the capital stock as provided by the articles of association had conformed to the capital stock as amended. P. L. 1907 c. 94, § 3.

Whenever it is shown to the satisfaction of the railroad commissioners that all the provisions of the two preceding sections have been complied with, they shall indorse upon said articles a certificate of such facts and their approval in writing. The secretary of state shall, upon payment of the fees prescribed by section five of chapter forty-seven cause the same with the indorsement thereon to be recorded, and shall issue a certificate in the following form :

STATE OF MAINE.

Be it known that whereas [*here the names of the subscribers to the articles of association should be inserted*] have associated themselves together with the intention of forming a corporation under the name of [*here insert the name of the corporation*] for the purpose of building and operating a street railroad in [*here insert a description of the road contained in the articles of association*] and have complied with the statutes of the state in such cases made and provided: Now, therefore, I, [*here insert the name of the secretary*] Secretary of the State of Maine, hereby certify that said [*names of subscribers*] their associates and successors, are legally organized and established as an existing corporation under the name of [*name of corporation*] with the powers, rights and privileges and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature thereunto subscribed and the seal of the State of Maine hereunto affixed this — day of — A. D. 19— [*day, month and year inserted*].

The secretary of state shall sign the same and cause the seal of the state to be affixed, and such certificate shall be conclusive evidence of the organization and establishment of such corporation at the date thereof. The secretary of state shall also cause a record of such certificate to be made, and a certified copy of such record may with like effect as the original certificate be given in evidence to prove the existence of such a corporation. R. S. c. 53, § 4; 96 Me. 114.

The first meeting for the purpose of organizing such corporation shall be called by a notice, signed by three of the subscribers to such articles of association, stating the time, place and purpose of such meeting, a copy of which notice shall, seven days at least before the day appointed therefor, be given to each subscriber, or left at his usual place of business or residence, or

deposited in the post office, postpaid, addressed to him at his usual place of business or residence; and whoever gives such notice shall make affidavit of his doings which shall be recorded in the records of the company. R. S. c. 53, § 5.

If the capital stock of any company formed under the foregoing provisions is found to be insufficient for constructing and equipping its road, such company may increase the same from time to time, to any amount for the purpose aforesaid. Such increase must be sanctioned by a vote, in person or by proxy, of two-thirds in amount of all the stockholders at a meeting thereof called by the directors for that purpose. R. S. c. 53, § 6.

Every corporation organized under the foregoing provisions before commencing the construction of its road shall present to the railroad commissioners a petition for approval of location, defining its courses, distances and boundaries, accompanied with a map of the proposed route on an appropriate scale with the written approval of the proposed route and location as to streets, roads or ways, of the municipal officers of the cities and towns in which said railroad is to be constructed in whole or in part and with a report and estimate prepared by a skillful engineer. Said commissioners shall upon presentation of such petition appoint a day for a hearing thereon and the petitioner shall give such notice thereof as said commissioners deem reasonable and proper, in order that all persons interested may have an opportunity to appear and object thereto. At such hearing any party interested may appear in person or by counsel. The board of railroad commissioners after hearing the petition shall, if they approve such location, subject to the provisions of section twelve, then determine whether public convenience requires the construction of such road and make a certificate of such determination in writing, which certificate shall be filed with their clerk within thirty days after such hearing. Within five days after the filing of such certificate with him, said clerk shall notify all who have become parties of record as aforesaid, or their counsel, of such determination and decision by sending to each party or their counsel, by mail, a certified copy of such certificate so filed with him. If the board of railroad commissioners approve such location and find that public convenience requires the construction of said road the corporation may proceed with the construction of said road, *provided*, that it first files with the clerk of county commissioners for the county in which said street railroad is to be located a copy of the location and plan aforesaid and another

copy of the same with the board of railroad commissioners. Any extension of, addition to, or variation from the location of any street railroad, organized under the provisions hereof, may be made in accordance with and subject to the foregoing provisions, *provided*, that no railroad shall be located across tide waters where vessels can navigate unless special permission of the legislature is obtained; no such permission shall be necessary where such railroad is desired, to cross public bridges already erected, but the authority to determine whether such crossing shall be permitted shall rest with the municipal officers of the cities or towns liable for the repair of such bridges respectively, who may impose such conditions and terms upon railroads desiring to cross the same as to them may seem expedient. In case any county is liable for the repair of a bridge, the county commissioners of such county shall have authority in the premises. R. S. c. 53, § 7; 94 Me. 568; 95 Me. 362; 96 Me. 112, 113.

Whenever any street railroad corporation is required to obtain the written approval of its proposed route and location, or of any extension of the same, as to streets, roads or ways, of the municipal officers of the cities and towns in which said railroad is to be constructed in whole or in part it shall make an application in writing and such municipal officers shall order public hearing thereon, giving such notice thereof as they deem proper but in no case less than seven days. Such notice shall contain a copy of such written application and warn the legal voters of such city or town to be present and be heard thereon. After hearing and within fourteen days after the filing of such application, such municipal officers shall file their decision thereon with the clerk of the city or town who shall make due record thereof. Any contract entered into between any such street railroad corporation and such municipal officers as to the terms, conditions and obligations under which such location is approved so far as consistent with the powers and duties of the railroad commissioners under the general laws of the state shall be valid and binding. If the municipal officers upon such written application therefor neglect to approve a route and location as to streets, roads or ways, or if they refuse to approve such a route and location, or if such route and location is not accepted by the corporation, in either case said corporation may within fourteen days after the expiration of the time for filing such decision, or within fourteen days after filing thereof, appeal to the railroad commissioners. A failure to appeal shall not bar the corporation from making a new application to municipal officers. Any

person or corporation claiming to be interested may appeal to the railroad commissioners within said fourteen days from any decision made by the municipal officers. In all such appeals the appellant shall file his appeal in writing in the office of the board of railroad commissioners who shall appoint a day for a hearing thereon and the appellant shall give such notice thereof as said commissioners deem reasonable and proper in order that all persons interested may have an opportunity to appear and object thereto. After hearing, the said commissioners shall make decision thereon and cause record thereof to be made in their office in lieu of the approval of the municipal officers. This act shall not apply to any location which has been heretofore approved by the proper municipal officers. P. L. 1907 c. 132.

Articles of association filed under section four may be amended at any time upon petition therefor signed by all of the corporators after such notice thereof as the railroad commissioners may deem necessary. No proceedings shall be dismissed because of the death of any person named as a director or corporator before final decree of approval of location, but the survivors may elect a new director or admit another associate, who shall sign the original articles of association and the subscription of stock then on file in the office of said commissioners. Any location may be amended at any time before final approval thereof, after notice and hearing thereon by the railroad commissioners, by filing a consent to said amendment signed by the municipal officers of the town interested. Amendments to petitions relating to street railroad corporations filed before the railroad commissioners may be made at any time before final decree with or without notice, as the commissioners may decide public interest may require. R. S. c. 53, § 8.

When the location of any street railroad shall have been approved as provided by law, the municipal officers may approve such additional locations for turnouts and spurs to property used or to be used by said corporation in the operation of its road as shall be necessary therefor, and such additional locations shall not be deemed to be extensions, additions or variations within the meaning of this chapter. R. S. c. 53, § 9.

If any corporation formed under the foregoing sections does not, within three years after its articles of association are filed and recorded in the office of the secretary of state, begin the construction of its road and expend thereon ten per cent of its capital, its corporate existence and power shall cease, unless the

same shall be extended as provided in the following section. R. S. c. 53, § 10.

The board of railroad commissioners may extend the corporate existence and powers of such corporation for a period not exceeding three years or may revive such corporate existence and powers for a like period after the same shall have ceased as provided in the preceding section. Said commissioners, if they deem it expedient, and if the same be prayed for, may include in such extension any rights or powers granted to such corporation by special law, and in such case all rights and powers of such corporation, whether existing under this chapter or under any special law, shall continue in full force for the period not exceeding three years determined by the commissioners. *Provided, however*, that before decreeing such extension or revival, notice shall be given and hearing had as provided by section seven of said chapter fifty-three. R. S. c. 53, § 11.

Such corporation may purchase or take and hold by its location aforesaid, as for public uses, land outside of the limits of streets, roads or ways, and all materials in and upon it, for the location, construction and convenient use of its road, whenever for any reason it appears to be impracticable to locate such a railroad within the limits of said streets, roads or ways, but the land so taken shall not exceed four rods in width unless necessary for excavation, embankments or materials; no location outside of the limits of any street, road or way shall be approved by said commissioners, unless it appears to be impracticable to locate said railroad within the limits of said streets, roads or ways. All damages for land and materials so taken shall be determined and paid in the manner and under proceedings as provided in case of lands taken for steam railroads. R. S. c. 53, § 12.

Any street railroad corporation may purchase or take and hold, as for public uses, land for borrow and gravel pits, spur tracks thereto, side tracks, turnouts, stations, car barns, pole lines, wires, installing and maintaining power plants, double tracking its road, improving the alignment thereof, changing or avoiding grades, or for avoiding grade crossings of any railroad; but if the owner of said land does not consent thereto, or if the parties do not agree as to the necessity therefor or the area necessary to be taken, the corporation may make written application to the railroad commissioners, describing the estate and naming the persons supposed to be interested; the commissioners shall

thereupon appoint a time for the meeting near the premises, and require notices to be given to the persons so interested as they may direct fourteen days at least before said time; and shall then view the premises, hear the parties, and determine how much, if any, of such real estate is necessary for the reasonable accommodation of the traffic and appropriate business of the corporation. If they find that any of it is so necessary, they shall furnish the corporation with a certificate containing a definite description thereof; and when such certificate is filed with the clerk of courts in the county where the land lies, the land shall be deemed and treated as taken; *provided, however*, that when land is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest on the termination of the life estate, such fact shall be stated in the application and the commissioners shall, in addition to the notice to the tenant for life, give notice by publication to all others interested in such matter as they deem proper. R. S. c. 53, § 13.

The land taken under the preceding section shall not be entered upon except to make surveys before the certificate aforesaid has been filed with the clerk of courts. All damages shall be determined and paid as provided by chapter fifty-one, in the case of lands taken for steam railroads, and section thirty-four of said chapter shall be applicable thereto. No meeting-house, dwelling-house, public or private burying grounds shall be so taken without consent of the owners. Nothing herein contained shall authorize the taking of lands already devoted to railroad uses except in cases where the railroad commissioners determine that such lands may be crossed in such manner as to avoid grade crossings with railroads. R. S. c. 53, § 14.

Whenever a location for a street railroad upon any street, road or way has been approved under the general law or any special act, with no actual occupation thereof by the rails of such company, such location in whole or in part may be canceled at any time by the municipal officers of the town where so located upon the petition of the directors of the corporation entitled to the same. R. S. c. 53, § 15.

Any street railroad corporation, under the direction of the railroad commissioners, may make any changes in the location of its road which it deems necessary or expedient and such changes shall be recorded where the original location was required by law to be recorded. R. S. c. 53, § 16.

Any street railroad corporation of this state, may be authorized to extend, construct, maintain and operate its road to, into and through cities and towns other than and in addition to those named in its charter or articles of association and to other points or places within the cities or towns where built or located on application to the board of railroad commissioners, and by compliance with and subject to the provisions of section seven of this chapter; the right of any connecting street railroad company specially conferred upon it by its charter shall be preserved unimpaired. R. S. c. 53, § 17.

So far as applicable the provisions of sections twenty-nine to forty-seven both inclusive, sections fifty, fifty-four, fifty-five and fifty-six, of chapter fifty-one, and sections seven, eight, nine, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, sixty, sixty-six to sixty-nine both inclusive, seventy-four and seventy-five, of chapter fifty-two, shall apply to street railroads. R. S. c. 53, § 18.

Said railroads shall be constructed and maintained in such form and manner, and with such rails and upon such grade as the municipal officers of the cities and towns where the same are located may direct, and whenever in the judgment of such corporation it shall be necessary to alter the grade of any city, town or county road, said alterations shall be made at the sole expense of said corporation with the assent and in accordance with the directions of said municipal officers. The said corporation may at any time appeal from the decision of such municipal officers determining the form and manner of the construction and maintenance of its railroad and the kind of rail to be used, to the board of railroad commissioners who shall upon notice hear the parties and finally determine the questions raised by said appeal. R. S. c. 53, § 19.

No street railroad shall be operated for street traffic until said commissioners have made an inspection of such railroad and granted a certificate of its safety for public travel. Any person or corporation violating the provisions of this section, forfeits to the state one hundred dollars for each offense, to be recovered in an action on the case, or by complaint and indictment, and the attorney general shall institute proceedings to recover the same. R. S. c. 53, § 20.

No corporation or person shall be permitted to construct or maintain any railroad for similar purposes over the streets, roads or ways that may be lawfully occupied by a street railroad in

any city or town, but any person or corporation lawfully operating any street railroad to any point to which the tracks of any other street railroad extend, may enter upon, connect with and use the same, on such terms and in such manner as may be agreed upon between the parties or if they shall not agree, to be determined by the railroad commissioners upon application, notice and hearing therefor. R. S. c. 53, § 21.

Any corporation organized under the provisions of section two may erect and maintain all necessary or convenient power stations, car houses and lines of poles, wires, appliances and appurtenances, subject to the general laws of the state regulating the erection of posts and lines, for the purposes of electricity. R. S. c. 53, § 22.

Any street railroad corporation of this state may erect and maintain hotels, cottages, places of amusement and pleasure grounds along its route, and for that purpose may purchase and hold real estate and personal property necessary or convenient therefor, *provided* that the right of taking lands or other property shall not extend to property to be used for such purposes, and such street railroad corporations may purchase and hold shares of the capital stock of any other corporation engaged in the business of owning, leasing, maintaining or operating such hotels, cottages, places of amusement and pleasure grounds. R. S. c. 53, § 23.

Any street railroad corporation may issue bonds in accordance with the provisions of the general law for any lawful purpose, and secure the same by mortgage of its road, franchises and property. R. S. c. 53, § 24; 103 Me. 271.

The municipal officers of any town may make at all times, such regulations as to the mode of use of tracks of any street railroad, the sprinkling and watering in cities by any street railroad of the space between and one foot beyond the outer rails of said tracks for the purpose of laying the dust, the rate of speed and the removal and disposal of snow and ice from the streets, roads and ways, by any street railroad corporation, as the public safety and convenience may require. Any street railroad corporation may appeal from the decision of such municipal officers making any regulation under this section to the board of railroad commissioners, who shall upon notice hear the parties and finally determine the questions raised by said appeal. R. S. c. 53, § 25.

Such corporations shall keep and maintain in repair such portions of the streets, roads or ways, as shall be by them occupied, and shall make all other repairs therein, rendered necessary by such occupation. If not repaired upon reasonable notice, such repairs may be made by said towns at the expense of said corporation. R. S. c. 53, § 26.

All street railroad corporations shall be liable for any loss or damage which any person may sustain, by reason of any negligence or misconduct of any such corporation, its agents or servants, or by reason of any obstructions, or defects in any street or road of any city or town, caused by the negligence of such corporation, its agents or servants, and shall hold such city or town harmless from any suits for such loss or damages; *provided*, such company shall have notice of any such suit, and shall be allowed to defend the same. R. S. c. 53, § 27.

Whoever willfully and maliciously obstructs any street railroad corporation in the use of its roads, tracks or property, or the passing of cars of said corporation thereon, and whoever aids or abets therein, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding sixty days. R. S. c. 53, § 28.

Whoever spits upon the floor of any street car shall be fined not less than two, nor more than ten dollars to be recovered on complaint. The officers of all street railroad companies shall cause a copy of this section to be posted in their several street cars. R. S. c. 53, § 29.

Upon a written application by any street railroad corporation, to the municipal officers of any city or town, and hearing thereon, the municipal officers may authorize said corporation to discontinue the running of its cars, during such portion of the winter months, and upon such terms and conditions as they may determine; said corporation may appeal from such decision to the board of railroad commissioners, who shall after reasonable notice and hearing, make such a determination thereon as shall be reasonable and proper, and their decision shall be final. R. S. c. 53, § 30.

CHAPTER XLVIII.

FERRIES.

County commissioners may license persons to keep ferries at such places and for such times as are necessary, except where they are otherwise legally established; may establish tolls for the passage of persons and property; revoke such licenses at pleasure; and shall take from the person licensed, a bond to the treasurer of state, with sureties, for the faithful performance of his duties. Whenever said commissioners remove a ferryman, they shall appraise the boat and other personal property used in running the ferry, at its fair value, and the person appointed shall purchase the same at said appraisal, if the person removed assents thereto. R. S. c. 25, § 1; 8 Me. 368; 42 Me. 20.

They may establish ferries at such times and places as are necessary, and fix their tolls, and when no person is found to keep them for said tolls, shall regulate and fix the compensation of the ferryman, and shall discontinue the same when, in their judgment, shall be expedient. When no person is found to keep them for the tolls, the towns in which they are established shall provide a person to be licensed to keep them, and shall pay the expenses, beyond the amount of tolls received, for maintaining them. When established between towns, they shall be maintained by them in such proportion as the commissioners order. For each month's neglect to maintain such ferry or its proportion thereof, each town forfeits fifty dollars. R. S. c. 25, § 2; 100 Me. 213.

Every keeper of a ferry shall keep a suitable and safe boat or boats, for use on the waters to be passed, and give prompt attendance for passage, according to the regulations established for the ferry. For neglecting to keep such boat, he forfeits twenty dollars, and for neglect of attendance, one dollar, to the prosecutor in an action of debt; and is liable in an action on the case to the party injured for his damages. R. S. c. 25, § 3.

Any one injured in person or property by the negligence or default of a ferryman may commence a suit on his bond, in

which the proceedings shall be similar to those in actions on the bonds of sheriffs. R. S. c. 25, § 4.

When a ferry is established by the legislature to be passed by a steam or horse boat, no other ferry shall be established on the same river within one mile above or below it. R. S. c. 25, § 5.

A person, who keeps a ferry contrary to the provisions of sections one or two, or without authority transports passengers or property across any licensed or established ferry for hire, or furnishes for hire, a boat or other craft for such purpose, forfeits four dollars for each day such ferry is kept, or for each time of transportation, and is also liable to the party injured and keeping the ferry at or near the place, for damages sustained by him, in an action on the case. R. S. c. 25, § 6.

When tidal waters, over which ferries are established, become so frozen that travelers may pass on the ice, the keepers of them shall level the ice, and clear and repair the passage way from day to day, so that the same may at all times be safe and convenient for travelers with teams, sleds and sleighs. Such way for passage may be made from a public landing sufficiently near to be connected with the opposite ferry landing. The commissioners shall fix a reasonable compensation therefor, to be paid from the county treasury. Or they may contract with another person to perform such duties, and give notice thereof to the keeper of the ferry before the river is closed; and during the continuance of such contract the liabilities of the keeper are transferred to the person contracting. R. S. c. 25, § 7; 79 Me. 463.

The ferryman, or person so contracting, forfeits ten dollars for each day's neglect to perform such duty, and is liable, in an action on the case, for damages to any person injured thereby. R. S. c. 25, § 8.

A licensed ferryman, who uses at his ferry a boat propelled by steam or horse power, forfeits his license, and is liable to any person or corporation for damages occasioned thereby. R. S. c. 25, § 9.

Persons required to use, at a ferry, steam or horse boats, may, when the passage by them is dangerous, use other safe boats. R. S. c. 25, § 10.

Whoever places a weir or other obstacle, or without necessity, anchors or places a raft, vessel or water craft, so as to obstruct the ordinary passage way of any boat at a ferry licensed or

established, forfeits twenty dollars to the proprietor of the ferry, to be recovered in an action on the case; unless such obstruction was inadvertently made, and removed within thirty minutes, if practicable, after notice given of its improper position, or unless it was occasioned by hauling into a wharf, pier, landing or dock, without unreasonable delay or willful misconduct. R. S. c. 25, § 11.

The proprietors of a ferry, to guide their boats, may sink piers near their ferry ways, above, and below the same, on each side of the river, not more than twelve feet in length or breadth, and not so sunk as to injure any wharf or landing where vessels had previously taken or discharged freight. R. S. c. 25, § 12; 42 Me. 19.

The commissioners of the county of Somerset have exclusive jurisdiction in all matters relating to ferries between the counties of Somerset and Kennebec. R. S. c. 25, § 13.

Penalty for evading payment of fare on ferry, R. S. c. 52, § 7; for disorderly conduct, §§ 80 and 81.

CHAPTER XLIX.

AQUEDUCTS AND WATER COMPANIES.

Any persons associated by agreement in writing as proprietors of an aqueduct, for conveying fresh water into or within any town, or as proprietors of funds for establishing such aqueduct, may apply, in writing, to some justice of the peace for the county in which any portion thereof is situated, or is proposed to be made, stating the name and style of their association, and the objects of their proposed meeting, and requesting such justice to issue his warrant to some one of the persons applying, directing him to call such meeting; and such justice may thereupon issue his warrant accordingly, stating therein the time, place and object of such meeting; and the proprietor, to whom the warrant is directed, shall notify such meeting, by posting the substance of the warrant, with his notice annexed thereto, seven days at least before the meeting, in some public place in

every town in which any portion of the aqueduct is, or is proposed to be made. R. S. c. 56, § 1.

Form of Application.

To C. E., esquire, one of the justices of the peace, within the county of Cumberland, State of Maine :

The subscribers, associated by agreement in writing, as proprietors of — [or of funds for establishing] an aqueduct, under the name and style of —, request you to issue a warrant to one of the said proprietors, hereby applying to you, directing him to call a meeting of said proprietors, to be held at —, in —, on the — day of —, 19—, at — o'clock in the — noon, for the following objects, to wit : [*Here state the purpose of the meeting.*]

A. B.
C. D.

The Form of Warrant by the Justice.

STATE OF MAINE.

—, ss.

To A. B., of —, in said county, one of the proprietors of the aqueduct association :

Whereas A. B. and C. D., associated by agreement, in writing, as proprietors of an aqueduct under the name and style of the — Aqueduct Association, have applied to me, C. E., esquire, one of the justices of the peace within said county, requesting me to issue a warrant to you, being one of said applicants, directing you to call a meeting of said proprietors, according to law, to be held at —, in —, on the — day of — next, 19—, at — o'clock in the — noon, for the purpose — [*here state it*]. You are hereby required to notify the proprietors aforesaid to meet at the time and place, and for the purpose aforesaid.

Dated at — aforesaid, the — day of —, A. D. 19—.

C. E., *Justice of the Peace.*

Notification. Pursuant to the foregoing warrant to me directed, I do hereby notify the proprietors aforesaid to meet at the time and place and for the purpose aforesaid.

Dated at —, this — day of —, 19—.

A. B.

The proprietors assembled under such warrant, and their successors and assigns, shall be a corporation by the name stated in their application; and may at any legal meeting, agree on the manner of calling future meetings, choose any number of directors and other officers to manage their business, and a clerk who shall be sworn, and shall record all by-laws, votes, and other proceedings of the corporation, in books provided and kept by him therefor, open to the inspection of any person appointed by the legislature for that purpose. R. S. c. 56, § 2.

The directors shall choose one of their number president; and may make such assessments on the proprietors of the shares in such aqueduct or funds as they find necessary; and if a proprietor fails to pay such assessment for thirty days after notice, they may maintain an action on the case in their corporate name to recover the amount thereof, or may sell, at auction, so many of his shares, as are sufficient to pay the same, with necessary charges; notice of the sale of such shares shall be given by advertising in some newspaper printed in the county three weeks successively, or by posting notifications thereof, twenty days at least before the sale, in at least two public places in each town wherein such aqueduct is, or is proposed to be made; and the surplus money, if any, arising from such sale, shall be paid to the owner of the shares so sold. R. S. c. 56, § 3.

At or immediately after the first meeting, the clerk shall enter, in such books, the names of the several proprietors, and the shares owned by each; and the subsequent transfer of shares shall also be entered by him, within three months after it is made, in such form and for such fees as the directors order; and no person shall be deemed a proprietor, whose share or interest is not so entered. R. S. c. 56, § 4.

The proprietors have one vote for each share, and may vote by proxy; for the breach of their by-laws they may impose penalties not exceeding thirty dollars for each offense; may purchase and hold real estate necessary for their purpose not exceeding thirty thousand dollars in value; and with the written consent of the municipal officers, they or any person, may dig up or open any road for the purpose of laying their pipes, or repairing or extending their aqueduct; but not so as to prevent the convenient passage of teams and carriages. R. S. c. 56, § 5.

Shares in such corporation are personal estate and may be attached on a writ and sold on execution for the debts of the holders, like shares in other corporations; and the franchises, fixtures, pipes, fountains and interests in lands of such corporations are liable to attachment and sale on execution, as personal property, for their corporate debts; but the purchaser thereof at such sale, shall not interfere with the possession of the corporation for two months after the sale; and within that time, it may redeem such franchise and property by paying the sum for which they were sold with interest; but if not so redeemed, the purchaser shall have the same rights under the franchise and to such property as the corporation had. Any creditor of such

corporation, whose execution has been satisfied by an ineffectual sale of such franchise or property, may revive the judgment by scire facias. R. S. c. 56, § 6.

Whoever maliciously injures such aqueduct or any of its appurtenances, forfeits not exceeding twenty dollars to the town, to be recovered by indictment; and is liable in a civil action, brought by the corporation, to pay treble the amount of the damages sustained thereby. R. S. c. 56, § 7.

A town where such aqueduct is located may put conductors into its pipes and draw water, free of expense, to extinguish fire in a burning building, if such conductors are so secured that water shall be drawn for that purpose only. R. S. c. 56, § 8.

All contracts made by or with such corporation, are in force after its dissolution; and the last shareholders shall have a corporate capacity and may prosecute and defend suits respecting such contracts commenced within six years after the dissolution, or after the cause of action accrued; and if no corporate property can be found to satisfy such judgments, and they are not satisfied within six months, the creditors may satisfy them from the private property of the shareholders as if the judgment had been against them in their private capacity. R. S. c. 56, § 9.

If such corporation owns any estate at its dissolution the proprietors shall be tenants in common thereof in proportion to the shares or interest which they hold in its stock. R. S. c. 56, § 10.

Whoever knowingly and willfully poisons, defiles or in any way corrupts the waters of any well, spring, brook, lake, pond, river or reservoir, used for domestic purposes for man or beast, or knowingly corrupts the sources of, or the tributaries of said sources of supply in such manner as to affect the purity of the water so supplied, or knowingly defiles such water in any manner, whether the same be frozen or not, or puts the carcass of any dead animal or other offensive material into said waters, or upon the ice thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year. R. S. c. 129, § 1.

Whoever willfully injures any property of any water company, or of any city, town or municipal corporation used by it in supplying water to its inhabitants, shall be punished by a fine not exceeding one thousand dollars and by imprisonment not exceeding one year; and such persons shall also forfeit and pay to such water company, city, town or municipal corporation, three times

the amount of actual damages sustained, to be recovered in an action on the case. R. S. c. 128, § 4.

All corporations chartered for the purpose of supplying towns and cities with pure water, shall have the same right to make application to the tribunal authorized by their respective charters for assessment of damages for land, rights or other property taken, as the parties owning or claiming said property have. R. S. c. 56, § 13.

Unless otherwise provided in their acts of incorporation, when any water company, duly authorized therefor, finds it necessary for its purposes and uses to take any land or other property, it shall file in the office of the county commissioners of the county where the land or other property taken is situated, plans and descriptions of all the land, and description of all other property taken. R. S. c. 56, § 11.

All such plans and descriptions, or all such descriptions filed, as aforesaid, prior to March nine, eighteen hundred and eighty-nine, are valid and legal for all purposes of taking. R. S. c. 56, § 12.

Water companies are generally incorporated under special acts and are, of course, subject to the obligations and enjoy the privileges specified in their charters.

Water company may have right of eminent domain. 69 Me. 262.

Water company may be exempted from taxation by the legislature. 67 Me. 136.

When charter provides that the company shall lay its pipes in such manner as not to obstruct or impede travel, a city is not liable for damages caused by uncovering water pipes, while making ordinary and suitable repairs in its streets. 83 Me. 270.

Rule of water company requiring water taker to pay for water for a whole year, although he uses it only a part of that time, is unreasonable and will not be upheld by the courts. 84 Me. 473.

Charter provision that the company may establish the rates and prices for water, under control of the legislature, does not deprive the courts of the power of adjudicating upon the rights of parties taking water. Ib.

The water pipes, hydrants and conduits of a water company laid through the streets of a town, are taxable as real estate to the company in possession. 85 Me. 330.

Company cannot shut off water from a water taker for non-payment of an old overdue and disputed account, if it has accepted payment of water rates becoming due subsequent to such overdue accounts. 87 Me. 290.

Right to take water from great ponds for domestic purposes is paramount to the right of mill owners to have the water for propelling their machinery, and that, to the extent that the two rights conflict, the latter must yield. 90 Me. 576.

A city or town may make a valid contract with a water company wherein, in consideration of the agreement of the company to furnish a supply of water for municipal purposes, it agrees to pay therefor, in addition to a specified sum of money, another sum each year equal to the amount of tax that may be assessed for that year upon the company's property, provided that the consideration for this agreement upon the part of the municipality is reasonably adequate and that the contract in other respects is reasonable and fair. 93 Me. 587.

Although such a contract may be made for the purpose of exempting from taxation the property of the contracting corporation, and the form adopted may be merely intended to cover with the semblance of legality an illegal attempt to exempt property from taxation without a fair return therefor, this is not necessarily so; and the validity of the contract will depend upon the circumstances of each case. Ib.

The term "exemption" implies a release from some burden, duty or obligation. It can not be properly said that a corporation, which for a valuable and adequate consideration obtains the agreement of the municipality in which it is located to reimburse it for the amount of taxes that it will be obliged to pay, is thereby exempted or released from the burden of paying its just proportion of taxes. Ib.

A contract, when made in good faith, and when its terms are reasonable and fair, is not contrary to public policy. In many cases it may be absolutely necessary for a city or town to make a water contract for a term of years, in order to obtain the great benefit of a sufficient water supply for the protection of the property of its inhabitants against fire, to provide for the health of its citizens by a proper sewer system and for other municipal purposes. Such a contract must contain some elements of uncertainty as to compensation because of the uncertainty of the extent of water service that may be required in the future by

reason of the growth of a municipality in population and the increase of its needs. Ib.

Where a water works system is purchased in good faith by a municipal corporation for the main and primary purpose of supplying water for its own municipal wants, and for domestic use by its inhabitants, under legislative authority, such legislation and the action of the municipal corporation under it in making the purchase, and in raising money by taxation therefor, are not in violation of that clause of the state constitution which requires equal taxation, because of the fact that incidentally the purchasing municipality may be compelled to assume the obligation of the original water company to provide water for some individual takers who reside outside of its territorial limits. 96 Me. 536.

If a village corporation, as purchaser of the property of a water company, should be obliged to furnish water for a few takers who reside outside the limits of the corporation, it must be assumed that it will receive a reasonable compensation therefor, so that the taxation of property within the village corporation will not be increased in the slightest degree by such purchase. But, in any event, this is merely incidental and subsidiary to the main and primary object of furnishing water for its lawful public purposes under legislative authority. Ib.

The legislature may grant to any public corporation, whether its municipal powers and purposes be general or limited, power to construct, or to purchase, and maintain a system of water works for the purpose of furnishing water for its municipal purposes and for use by its inhabitants for domestic and sanitary purposes. 96 Me. 539.

When a village corporation is only invested with a power "to raise such sums of money as may be sufficient for the support of a suitable number of hydrants, in case water is brought into its limits in a suitable manner and sufficient quantity, and suitable fire engines, engine houses, hose, buckets, hooks and ladders, and provide a sufficient quantity of water in the different parts of said corporation for the extinguishment of fire and for organizing and maintaining within its limits an efficient fire department", and has no power to raise money for any other purpose, such corporation has no authority to enter into a contract with a water company providing that after the expiration of a term of years the corporation should have the right to purchase the water company's entire plant, at an appraised value to be fixed by three appraisers, chosen one by the corporation, one by the

water company, the third by these two, and on payment of the price so determined, that the water company should transfer to the corporation its entire plant, and if such corporation does enter into such a contract it is *ultra vires*. 104 Me. 103.

When a village corporation has made a contract for the purchase of the plant of a water company and which contract was *ultra vires* at the time it was made and afterwards by a legislative act such corporation has been authorized to "vote to purchase the entire works and rights" of the water company "for such sums of money as may be adjudged payable according to the terms" of the contract, such authority may have a retrospective action and make valid the contract, but when the corporation attempts to avail itself of the granted power, it must proceed according to the terms of the act, and first "vote to purchase", etc., "for such sums of money as may be adjudged payable", etc., before it can maintain a bill in equity for the specific performance of the contract. Ib.

CHAPTER L.

DRAINS AND COMMON SEWERS.

Whoever digs up the ground in a highway or street to lay or repair any drain or common sewer without the written consent of the municipal officers, forfeits for each offense four dollars to the town. R. S. c. 21, § 1.

The construction of sewers is not within the scope of the corporate authority of a town. The municipal officers are the only tribunal authorized to construct sewers at the expense of a town. For the torts of this tribunal, the town is not responsible. 92 Me. 493.

The municipal officers of a town, or a committee duly chosen by the town, may, at the expense of the town, construct public drains or sewers along or across any public way therein; and through any lands of persons or corporations, when they deem it necessary for public convenience or health; but neither the municipal officers of the town, nor such committee, shall con-

struct any public sewer therein until the same shall be authorized by vote of said town, and an appropriation made for the purpose; and when constructed such sewers shall be under the control of the municipal officers. R. S. c. 21, § 2.

The common law requires a town to build a drain only where its highway would otherwise obstruct the flow of water in its natural channel, or cause it to collect and stand upon adjoining land to the injury of the owner. 56 Me. 407.

The municipal officers of the city of Portland had the right to construct a sewer with an outfall in a public dock, below low water mark. 67 Me. 46.

No right is given by law to create a nuisance in such public dock. *Ib.*

The city must at its peril make the outfall of its sewers where the deposits from them will be removed by the reflux of the tides so that they will not create a nuisance either to public health or the right of navigation, or they must provide for their speedy removal in some other mode. 74 Me. 272.

There is no general statute authorizing towns in their corporate capacity to lay out or construct drains or sewers, as there is respecting ways. It is only when such drains have been constructed and persons have paid for connecting with them, that the town becomes responsible in regard to maintaining and keeping the same in repair, and assumes responsibilities in reference thereto. 82 Me. 355.

The municipal officers in the performance of these duties and in the exercise of the authority with which they are invested by general law, act not as agents of the town, but as public officers, deriving their power from the sovereign authority. They act upon their own responsibility and are not subject either to the control or direction of the inhabitants of the town, but are independent board of public officers, vested by law with the control of all matters within their jurisdiction, and performing duties imposed by general law. 82 Me. 356.

The city in its corporate capacity, without special charter privileges, is not invested, either by statutory provisions or by the exercise of the authority necessary incident to the discharge of its corporate rights and the performance of its duties, with the power to lay out and construct drains and sewers in such a manner as to impose any legal liability upon the city for a nuisance created thereby. There is no general statute in this state

conferring upon a city in a corporate capacity any authority to lay out and construct sewers and drains. 99 Me. 78.

A municipal corporation is not responsible in damages for injuries caused to a person's property by the flowing back of water and sewage from a public sewer with which the property is connected. Where this injury results entirely from some fault in the location or plan of construction of the sewer, or in the general design of the sewer system, and not at all because of any want of repair or failure of the municipality to maintain the sewer to the standard of efficiency of its original plan of construction. 100 Me. 260.

There is no difference in principle upon this question, whether the sewer was originally located and planned by the municipal officers of the city, acting under the authority of the general statutes, as they now exist and have existed for a long time, or by the city council of the city, acting under the authority of a special statute which conferred that power upon the city council. *Ib.*

In either case the duty to be performed is one of a judicial character, involving the exercise of large discretion, with which there is necessarily a broad latitude for the judicial determination of these officers, whoever they may be. *Ib.*

The distinguishing test which will determine the question as to the liability or non-liability of a municipality is to be found in the nature of the duties imposed or authorized by the legislature and to be performed, rather than in the tribunal which is, or the persons who are, authorized and required to perform these duties. *Ib.*

A municipal corporation is not liable to an action for damages either for the non-exercise of, or for the manner in which it exercises in good faith, discretionary powers of a public or legislative character. *Ib.*

For failure upon the part of the city to maintain and keep in repair the sewer which caused the injury to the plaintiff's property, the defendant would have been liable by the express provisions of the special act under which it was located and planned, as well as by those of the general statute. But the evidence does not disclose any failure upon the part of the city in this respect. Upon the contrary, it appears that the injury to the plaintiff's property resulted entirely from the insufficient size of the sewer and of its outlet, a fault in the original plan of construction, for which the city is not liable. *Ib.*

When the municipal authorities in the process of repairing a public sewer stop up the pipe of one who has lawfully connected with it so that it fills and bursts, the municipality is liable for the damage occasioned thereby. 103 Me. 119.

Before the land is so taken, notice shall be given, and damages assessed and paid therefor as is provided for the location of town ways. R. S. c. 21, § 3.

Whenever a public drain or sewer is located and about to be constructed under the general provisions of law across the right of way of any railroad, unless the municipal officers or committee of the city or town which located the drain or sewer shall agree with the corporation operating such railroad as to the place, manner and conditions of the crossing, the railroad commissioners, upon petition of either party, after notice and hearing, shall determine the place, manner and conditions of such crossing; all the work within the limits of such railroad location shall be done under the supervision of the officers of the corporation operating said railroad and to the satisfaction of the railroad commissioners, and the expense thereof shall be borne by the city or town in which said drain or sewer is located; *provided, however*, that any additional expense in the construction of that part of the sewer or drain within the limits of the right of way of said railroad occasioned by the determination of said commissioners shall be borne by said railroad company or by the city or town in which said drain or sewer is located, or shall be apportioned between such company and the city or town as may be determined by said railroad commissioners. Said commissioners shall make report of their decision in the same manner as in the case of highways located across railroads and subject to the same right of appeal. R. S. c. 21, § 4.

When any town has constructed and completed a public drain or common sewer, the municipal officers shall determine what lots or parcels of land are benefited by such drain or sewer, and shall estimate and assess upon such lots and parcels of land, and against the owner thereof, or person in possession, or against whom the taxes thereon shall be assessed, whether said person to whom the assessment is so made shall be the owner, tenant, lessee or agent, and whether the same is occupied or not, such sum not exceeding such benefit as they may deem just and equitable towards defraying the expenses of constructing and completing such drain or sewer, the whole of such assessments not to exceed one-half of the cost of such drain or sewer, and such

drain or sewer shall forever thereafter be maintained and kept in repair by such town. The municipal officers shall file with the clerk of the town the location of such drain or sewer, with a profile description of the same, and a statement of the amount assessed upon each lot or parcel of land so assessed, and the name of the owner of such lots or parcels of land or person against whom said assessment shall be made, and the clerk of such town shall record the same in a book kept for that purpose, and within ten days after filing such notice, each person so assessed shall be notified of such assessment by having an authentic copy of said assessment, with an order of notice signed by the clerk of said town, stating the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at his usual place of abode in said town; if he has no place of abode in said town, then such notice shall be given or left at the abode of his tenant or lessee if he has one in said town; if he has no such tenant or lessee in said town, then by posting the same notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed, at least thirty days before said hearing, or such notice may be given by publishing the same three weeks successively in any newspaper published in said town, the first publication to be at least thirty days before said hearing; a return made upon a copy of such notice by any constable in said town, or the production of the paper containing such notice, shall be conclusive evidence that said notice has been given, and upon such hearing the municipal officers shall have power to revise, increase or diminish any of such assessments, and all such revisions, increase or diminution shall be in writing and recorded by such clerk. R. S. c. 21, § 5.

A land owner may be required to contribute toward the cost of a public work, a sum equal to the increased value of his property by reason of peculiar and special benefits thereby given, in addition to those bestowed upon him in common with the general public. A tax may be recovered of a land owner when duly assessed on his land under the foregoing section, according to the benefit accruing to him from the construction of a public sewer. 84 Me. 212.

Overvaluation cannot be set up as a defense to the tax. The statute remedy in such cases is exclusive. Ib.

Where the evidence fails to show that the municipal officers constructed a "public drain," or "common sewer" in the exercise of any authority conferred by the statute of eighteen hundred

and eighty-nine, but satisfactorily proves that the acts complained of were performed by the highway surveyor while making necessary repairs on the highway by cleaning out the old ditch, and one or more of the culverts, in order that they might serve the purpose for which they were designed: *Held*, that if the effect of these operations was to cause the surface water to flow upon the plaintiff's land adjacent more freely than it had previously been accustomed to do, no action will lie against the town for the damage thereby occasioned. 86 Me. 378.

Such proof will not sustain an action upon the statute of eighteen hundred and eighty-nine, chapter two hundred and eighty-five, relating to public drains and common sewers; and a verdict for the defendants may be properly ordered by the presiding justice. 86 Me. 378.

Any person not satisfied with the amount for which he is assessed, may, within ten days after such hearing, by request in writing given to such clerk, have the assessment upon his lot or parcel of land determined by arbitration. The municipal officers shall nominate six persons who are residents of said town, two of whom selected by the applicant, with a third resident person selected by said two persons, shall fix the sum to be paid by him, and the report of such referees made to the clerk of said town, and recorded by him, shall be final and binding upon all parties. Said reference shall be had and their report made to said clerk, within thirty days from the time of hearing before the municipal officers as provided in section five. R. S. c. 21, § 6.

Any person may enter his private drain into any such public drain or common sewer, while the same is under construction and before the same is completed, and before the assessments are made, on obtaining a permit in writing from the municipal officers, or the sewer board having the construction of the same in charge; but after the same is completed and the assessments made, no person shall enter his private drain into the same, until he has paid his assessment and obtained a permit in writing from the town treasurer, by authority of the municipal officers. All permits given to enter any such drain or sewer, shall be recorded by the clerk of said town before the same are issued. R. S. c. 21, § 7.

Several of the cities in this state have special laws in relation to construction of sewers. A different mode of application for

permits than that set forth in the foregoing section is provided therein.

The right of action against a town, for not maintaining and keeping in repair a public drain or sewer, is given by chapter twenty-one of the revised statutes to those only who have a right to enter the sewer. 97 Me. 509.

Written application to the municipal officers, distinctly describing the land to which it applies, is an essential prerequisite to their power to grant such right. Ib.

A permit from the municipal officers to enter such sewer runs with the land; but a person cannot claim under such a permit granted to one who was a stranger to the title at the time it was given. Ib.

All assessments made under the provisions of section five, shall create a lien upon each and every lot or parcel of land so assessed, and the buildings upon the same, which lien shall continue one year after said assessments are made, and within ten days after they are made, the clerk of said town shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said town; if said assessments are not paid within three months from the date thereof, the treasurer shall, at public auction, such of said lots or parcels of land upon which such assessments remain unpaid, or so much thereof as is necessary to pay such assessments and all costs and incidental charges; he shall advertise and sell the same within one year from the time said assessments are made, as real estate is advertised and sold for taxes under chapter ten, and upon such sale, shall make, execute and deliver his deed to the purchaser, which shall be good and effectual to pass the title of such real estate; the sum for which such sale shall be made, shall be the amount of the assessment and all costs and incidental expenses. R. S. c. 21, § 8.

Any person to whom the right by law belongs, may at any time within one year from the date of said sale, redeem such real estate by paying to the purchaser or his assigns the sum for which the same was sold, with interest thereon at the rate of twenty per cent a year, and the costs of re-conveyance. R. S. c. 21, § 9.

If said assessments are not paid, and said town does not proceed to collect said assessments, by a sale of the lots or parcels of land upon which such assessments are made, or does not

collect, or is in any manner delayed or defeated in collecting such assessments by a sale of the real estate so assessed, then the said town, in the name of said town, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court competent to try the same, and in such suit may recover the amount of such assessment, with twelve per cent interest on the same from the date of said assessments and costs. R. S. c. 21, § 10; 84 Me. 215.

When any such assessment shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same, shall have a lien upon such lot or parcel of land with the buildings thereon, for the amount of said assessment so paid by said person, and incidental charges, which lien may be enforced in an action of assumpsit as for money paid, laid out and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots, under chapter ninety-three, which lien shall continue one year after said assessment is paid. R. S. c. 21, § 11.

The seven preceding sections shall not apply to any city or town, until they shall have been accepted by the inhabitants of such town or the city council of such city at a meeting legally called therefor. R. S. c. 21, § 12.

Abutters upon the line of a public drain existing in any town or city which has not accepted the provisions of the eight preceding sections, and abutters upon the line of a public drain constructed prior to such acceptance, and the owners of contiguous private drains, may enter and connect with such public drain, on written application to the municipal officers, distinctly describing the land to which it applies, and paying therefor what they determine. They shall then give the applicants written permits so to enter, which shall be available to the owner of the land so described, his heirs and assigns, and shall run with the land without any other or subsequent charge or payment. Said officers shall establish such other regulations and conditions for entering public drains, as they deem expedient. R. S. c. 21, § 13; 95 Me. 310; 97 Me. 510.

If any person is dissatisfied with the sum which he is required to pay to enter a public drain, and within ten days after notice thereof, requests in writing to have it determined by arbitration, said officers shall nominate six persons, any two of

whom, selected by the applicant, with a third person, selected by himself, may fix the sum to be paid; and by paying it and the fees of the arbitrators, the applicant shall be entitled to a permit. R. S. c. 21, § 14.

All drains, heretofore made at the expense of a town, shall be maintained, managed, controlled and entered the same as if made under this chapter, subject to the rights of private persons therein. R. S. c. 21, § 15.

A municipal corporation is liable for indictment if it so constructs its public sewers that the outfalls thereof create a public nuisance, noisome and prejudicial to the public health, provided accumulations of filth thence proceeding are not promptly removed. It is not necessary in such an indictment to allege negligence in the adoption of the plan of their sewerage system or careless execution of the same. And it is no sufficient legal answer in such case that they exercise their best judgment, and proceeded with reasonable care in adopting their sewerage system and constructing their sewers. 74 Me. 268.

If any person connects a private drain with a public drain, or enters it by a side drain, without a permit, the municipal officers may forthwith destroy such connection; and such person forfeits to the town where the offense is committed, not exceeding two hundred dollars, to be recovered by indictment or action of debt. R. S. c. 21, § 16.

If any person willfully or negligently violates any condition or regulation prescribed in his permit, said officers may forthwith disconnect his drain from the public drain and declare his permit forfeited; and such person, his heirs and assigns, shall not be allowed to enter it again without a new permit. Whoever by the construction or use of a private drain commits a nuisance, is liable therefor notwithstanding anything herein contained. R. S. c. 21, § 17.

If the officers disconnect the drains of any person who willfully or negligently violates any condition or regulation prescribed in his permit and filth accumulates upon the premises, such filth shall be removed by the owner or occupant of such premises, and if he neglects to remove the same within twenty-four hours after notice, it may be removed upon the order of the board of health and all expenses thereof shall be paid by the owner or occupant of the premises, or by the person who caused or permitted such filth. R. S. c. 18, § 64; 57 Me. 438; 87 Me. 474.

When a nuisance exists upon lands, it is the general rule that it is the occupier of the lands, and he alone, to whom responsibility for the premises *prima facie* attaches; but the owner of the lands is responsible if he has created or maintained the nuisance, and for the purpose of determining the responsibility in such case, the trustee holding the legal title or a receiver or other officer appointed by a court, will be regarded as the owner of the lands. The owner is answerable for his own acts, in this regard, and for those of his servants, agents, employés, if their acts are done in the course of their employment. This is true even if the acts constitute a positive malfeasance or misconduct. It makes no difference that the principal or master did not actually authorize or even know of the act or omission of his servant or agent. If a nuisance is created by a corporation, the corporation itself and such of its officers as have direction and control of its business, as well as its agents and employés who contributed to the nuisance, may be jointly or severally sued or indicted therefor. 145 Mass. 38; 80 N. Y. 579; 108 N. Y. 530; 3 Hill 479; 28 Hun. 458; 115 N. Y. 203; 6 C. & P. 292; 44 Ga. 488; 6 M. & W. 487; 8 Ohio St. 353; 8 Gray, 195; 4 Cushing, 277; 54 Me. 46.

After a public drain has been constructed and any person has paid for connecting with it, it shall be constantly maintained and kept in repair by the town, so as to afford sufficient and suitable flow for all drainage entitled to pass through it; but its course may be altered, or other sufficient and suitable drains may be substituted therefor. If such town does not so maintain and keep it in repair, any person entitled to drainage through it may have an action against the town for his damages thereby sustained. R. S. c. 21, § 18.

In bringing an action under the provisions of the foregoing section, the defendants cannot be found guilty, until all the facts necessary to constitute their guilt have been affirmatively alleged and proved. 56 Me. 411.

If the town does not maintain and keep the drain in repair any person entitled to drainage through it may have an action against the town for his damages thereby sustained. 66 Me. 154.

It is no legal offense that the rains which cause the overflow of a sewer were extraordinarily severe. *Ib.*

A town voluntarily accepting the statute which authorizes it to make sewers and to assess the expense thereof on the lands

benefited thereby, is not exempt from liability to private actions by persons injured by this negligence in exercising the powers so granted and accepted, to the same extent as it is in the performance of duties imposed upon it by general law, exclusively for public purposes, and without its corporate assent. 82 Me. 358.

The plaintiff must prove that he or his predecessor entitled made written application to the municipal officers to enter and connect with the sewer, and that the municipal officers gave the applicant a written permit so to do. 97 Me. 510.

A town is not responsible in damages for injuries caused to a person's property by the flowing back of water and sewage from a public sewer with which the property is connected, if this injury results entirely from some fault in the location or plan of construction of the sewer, or in the general design of the sewer system, and not at all because of any want of repair or failure of the town to maintain the sewer to the standard of efficiency of its original plan of construction. 100 Me. 260.

A town is not liable to an action for damages either for the non-exercise of, or the manner in which it exercises in good faith, discretionary powers of a public or legislative character. 100 Me. 261.

The injury sustained by the plaintiff, by reason of the flowing back of water and sewage of a public sewer with which the plaintiff's property was properly connected, not all caused by any failure of the town to maintain and keep in repair this sewer to its original extent and degree of efficiency, but was caused by the sewer becoming overloaded by reason of the same being extended in the direction away from its outlet and by the construction of several other sewers which connected with and emptied into the one in question. *Held*, that the plaintiff could not recover. 101 Me. 311.

In order to recover against a municipality for violation of revised statutes, chapter twenty-one, section eighteen, requiring proper maintenance and repair of public drains and sewers, the plaintiff must establish the following propositions:

1. That the drain in question was a public drain or sewer, one legally established by act of the municipal officers of the city.

2. That the plaintiff was a person entitled to drainage through it, not a mere trespasser, but one who had fulfilled the require-

ments of law which were conditions precedent to the enjoyment of the right of drainage.

3. That the defendant had failed to maintain the sewer, or to keep it in repair, so as to afford sufficient and suitable flow for all drainage entitled to pass through it. And on this point, it must be shown that the defect was not in the original system established by the judicial act of the municipal officers, but that there was an actual failure on the part of the city to maintain and keep the drain in repair after its construction.

4. That the plaintiff suffered injury from this neglect of the city to properly repair and maintain the sewer. 99 Me. 139.

When the plans for proposed drains or sewers have been finally determined upon by the proper municipal officers, judicial duty comes to an end. The work of constructing them in accordance with the plans adopted is purely ministerial in character. There is great unanimity of opinion among the authorities on this point, as well as upon the resulting rule that municipal corporations are bound to exercise reasonable care, skill and prudence in carrying on the actual work of constructing such improvements, and must respond in damages for any injury done to private property by the negligent or unskillful manner in which this duty is performed by them. 72 Conn. 350; 25 Ind. 512; 84 Ind. 325; 119 Ind. 148; 70 Md. 56; 110 Mass. 216; 149 Mass. 410; 56 N. H. 291; 90 N. Y. 435; 52 Vt. 481; 118 U. S. 19.

The duty of municipal corporations relative to the maintenance of drains and sewers, when completed, like the duty involved in the work of construction, is purely ministerial in character. Therefore, while not an insurer of their condition, unless made so by some statutory provision, a corporation is bound to use due care and vigilance to keep them clear and in a proper state of repair, and is responsible at common law for damages resulting from a failure on its part to so do. In the application of this rule of liability, it makes no difference by whom the drain or sewer in any particular case was constructed, provided it appears that the municipality has assumed and exercised control over it. Hence, even though built by a private individual, the corporation, by adopting it to the use of its public, will become responsible for its proper maintenance to the same extent as though constructed by its own agents. Williams Municipal Liability for Tort, § 157, citing 66 Me. 154; 68 Ill.

167; 62 Ill. App. 26; 67 Ind. 228; 50 Ia. 197; 159 Mass. 324; 56 N. H. 291; 46 N. Y. 194; 38 Vt. 350; 118 U. S. 19.

Municipal corporations are liable not only for neglecting to clean and repair drains and sewers, but also for cleaning or repairing them in a negligent manner. 64 Md. 491; 88 Va. 402; 104 Mass. 13; 93 Wis. 95.

All proceedings of municipal officers as aforesaid shall be at their legal meetings. A suitable record shall be made of all such permits, exhibiting the persons and lands to which they apply. Said officers have exclusive direction, on behalf of their town, of all prosecutions under this chapter. R. S. c. 21, § 19; 95 Me. 310.

If any person, after the sum to be paid by him for a permit has been determined by arbitration, neglects to pay it within sixty days after notice thereof, with the fees of the arbitrators, he shall have no benefit of such determination, or of his permit. The municipal officers may determine the fees of the arbitrators, which shall be paid in advance, if required; and their award shall be returned by them to the town clerk, and recorded with the proceedings of said officers in establishing such drains. R. S. c. 21, § 20.

If a private drain becomes so obstructed or out of repair as to injure any street or highway, and the persons using it, after notice by the road commissioner, unreasonably neglect to repair such injury, it shall be repaired by the town, and the expense thereof may be recovered to the town in an action on the case against any one or more of the persons using such drain. R. S. c. 21, § 21; 51 Me. 524.

Whoever willfully or carelessly injures or obstructs such public drain or its outlet, or any street or highway culvert leading into it, is liable to the town where it is located, in an action on the case for double the amount of injury and damages thereby caused, in addition to all other legal penalties therefor. R. S. c. 21, § 22.

When a person, at his own expense, lays a common drain or sewer, all who join or enter it, shall pay him their proportion of such expense; and the expense of opening and repairing shall be paid by all benefited, to be determined in each case by the municipal officers, subject to appeal to the county commissioners. R. S. c. 21, § 23.

The municipal officers shall notify each person of the amount

which he is to pay, and to whom; and if not paid in ten days, he shall pay double the amount with cost. R. S. c. 21, § 24.

Before such drain is opened for repairs, all persons interested shall have seven days' notice thereof, given as the municipal officers direct; and if any one objects and said officers think his objection reasonable, he shall not be liable to any expense therefor; if not thought reasonable, or if no objection is made within three days, they may give written permission to proceed. R. S. c. 21, § 25.

The municipal officers of a town may at the expense of the town construct ditches and drains to carry water away from any highway or road therein, and over or through any lands of persons or corporations when they deem it necessary for public convenience or for the proper care of such highway or road, *provided* that no such ditch or drain shall pass under or within twenty feet of any dwelling-house without the consent of the owner thereof. Such ditches or drains shall be under the control of said municipal officers and willful interference therewith shall be punished as is provided by statute for obstruction in a traveled road. If such town does not maintain and keep in repair such ditches and drains, the owner or occupant of the lands through or over which they pass, may have his action against the town for damages thereby sustained. R. S. c. 21, § 26.

Before land is so taken, notice shall be given and damages assessed and paid therefor as is provided for the location of town ways. R. S. c. 21, § 27.

Persons or corporations possessing land, swamp, meadow, quarries or mines, which by reason of adjacent lands or highways, cannot be approached, drained or used without crossing said lands or highways, may establish drains or ditches thereto, in the manner hereinafter provided. R. S. c. 21, § 28.

The party desiring to make such drains and ditches shall file a petition therefor with the county commissioners, in the county where the premises are situate, setting forth the proposed work, the situation of the adjoining lands, and the names of the parties interested, if known, accompanied by a bond approved by the commissioners and payable to the county treasurer, conditioned to pay all costs and damages. R. S. c. 21, § 29.

Said commissioners thereupon, shall order notice to all parties named therein, by serving on them an attested copy thereof with the order thereon, fourteen days before their next regular ses-

sion, and by publishing it in some newspaper published in said county, if any, otherwise in some paper in an adjoining county, and after said order has been complied with, they may appoint a committee of review of not less than three, nor more than five disinterested persons, and fix their daily compensation; they shall meet on the premises on the day named, and by examination determine whether the proposed drain or ditch is necessary to the beneficial use of said lands, and if so, said committee shall lay out and establish the same, in a manner to cause the least injury, and shall assess the damages which any proprietor of the adjacent lands is likely to sustain, and report the same with all their proceedings to said commissioners; but before said committee proceeds to said examination they shall give ten days' notice of the time and place of their meeting, by posting notifications thereof in two public places, in the town in which said lands lie. R. S. c. 21, § 30.

At the next meeting of said commissioners after the report of the committee is received, they may, if deemed reasonable, accept such report. R. S. c. 21, § 31.

The party praying for such drains or ditches shall cause the final report and adjudication to be recorded in the registry of deeds for the county, and shall pay or tender in payment the full amount of damages to the parties to whom the same is adjudicated. R. S. c. 21, § 32.

The owners of a drain or ditch constructed for the purposes above named, or any one of them benefited thereby, may, from time to time, improve, deepen and repair the same in such manner as is necessary to make it effective, and may remove and use any rock, earth or other material necessary for such improvements, and may enter upon the lands through which such drain or ditch passes, for that purpose. R. S. c. 21, § 33.

All damages sustained by any person by reason of such improvement, including the value of the royalty or stumpage on the rock, and of the other material removed and used, may be recovered against the persons or corporations taking said material, in an action on the case; or upon application to the county commissioners, at the election of the party injured, who shall assess the damages, and proceedings upon appeal may be conducted as provided in section eight of chapter twenty-three. R. S. c. 21, § 34.

Whoever damages such works shall be punished as provided in chapter one hundred and twenty-eight, for offenses of like nature. R. S. c. 21, § 35.

CHAPTER LI.

EDUCATION OF YOUTH.

The school districts in all towns in the state are abolished. *Provided, however,* that school districts organized with special powers by act of the legislature may retain such organization and special powers; but said districts shall annually on or before the first day of June, by their agents, trustees or directors, submit to the school committees of their several towns estimates of the amounts required for the maintenance of the schools therein, other than free high schools, for the ensuing school year, and shall be entitled to such portion of the common school funds of the town as said committees shall determine, which sum shall not be less than is necessary for the maintenance of their schools for a period equal to that of the other schools of the town; and *provided further,* that the corporate powers of every school district shall continue so far as the same may be necessary for meeting its liabilities and enforcing its rights; and any property held in trust by any school district by virtue of a gift, devise or bequest for the benefit of said district shall continue to be held and used according to the terms thereof. R. S. c. 15, § 1.

The location of any school legally established prior to March seventeen, eighteen hundred and ninety-three continues unchanged, notwithstanding the district is abolished; but any town at its annual meeting, or at a meeting called for the purpose, may determine the number and location of its schools, and may discontinue them or change their location; but such discontinuance or change of location shall be made only on the written recommendation of the superintending school committee, and on conditions proper to preserve the just rights and privileges of the inhabitants for whose benefit such schools were established; *provided, however,* that in case any school shall hereafter have too few scholars for its profitable maintenance, the superintending school committee may suspend the operation of such school for not more than one year unless otherwise instructed by the town, but any public school failing to maintain an average

attendance for any school year, of at least eight pupils, shall be and hereby is suspended, unless the town in which said school is located shall by vote, at the annual meeting after the said committee shall have made a written recommendation to that effect, instruct its superintending school committee to maintain said school. The superintendent of schools in each town shall procure the conveyance of all common school pupils residing in his town, a part or the whole of the distance, to and from the nearest suitable school, for the number of weeks for which schools are maintained in each year, when such pupils reside at such a distance from the said school as in the judgment of the superintending school committee shall render such conveyance necessary. *Provided, however,* that the superintending school committee may authorize the superintendent of schools to pay the board of any pupil or pupils at a suitable place near any established school instead of providing conveyance for said pupil or pupils, when in their judgment it may be done at an equal or less expense than by conveyance. R. S. c. 15, § 2.

When a location for the erection or removal of a schoolhouse and requisite buildings has been legally designated, by vote of the town at any town meeting called for that purpose and the owner thereof refuses to sell, or, in the opinion of the municipal officers, asks an unreasonable price for it, or resides without the state and has no authorized agent or attorney therein, they may lay out a schoolhouse lot, not exceeding three acres, and appraise the damages therefor; and on payment or tender of such damages, or if such owner does not reside in the state, upon depositing such damages in the treasury of such town for his use, the town designating it may take such lot to be held and used for the purpose aforesaid; and when such schoolhouse has ceased to be thereon for two years, said lot reverts to the owner, his heirs or assigns. And any town or city may take real estate for the enlargement or extension of any location designated for the erection or removal of a schoolhouse and requisite buildings and playgrounds, as herein provided; but no real estate shall be so taken within fifty feet of a dwelling-house, and all schoolhouse lots and playgrounds that require fencing shall be fenced by the town or city. R. S. c. 15, § 3.

If the owner is aggrieved at the location of the lot, or the damages awarded, he may apply to the county commissioners within six months, who may change the location and assess the damages. If the damages are increased, or the location changed,

such town or district shall pay the damages and costs ; otherwise the costs shall be paid by the applicant. R. S. c. 15, § 4.

If any town or school district, by its officers or by a committee, has designated, located and described a lot upon which to erect, move or repair a schoolhouse, and from mistake or omission has failed to comply with the law, whereby such location has been rendered invalid, three legal voters and tax-payers thereof may apply in writing to the selectmen of said town, and have the lot, so designated or described, re-appraised by them. R. S. c. 15, § 5.

The selectmen of any town to whom such application has been made, shall forthwith give not less than seven nor more than twenty days' notice to the clerk of said town or district and to the owner of such real estate, or to the persons having the same in charge, of the time and place by them fixed for such hearing, and shall, after examination and hearing of all interested, appraise the lot as set out and affix a fair value thereon, exclusive of improvements made by said district or town, either by buildings or otherwise ; and shall, as soon as practicable, notify the town or district clerk, and the persons interested in said estate who had been notified as hereinbefore provided, of the sum at which said lots had been appraised. R. S. c. 15, § 6.

The sum fixed as the value of said lot shall be assessed, collected and paid over as other school money. R. S. c. 15, § 7.

Any sum which has been tendered and is in the hands or under the control of the persons owning or having charge of such land, shall be allowed in payment of said appraisal. R. S. c. 15, § 8.

If the town or district, or persons owning or having charge of the land on which such location is made, are dissatisfied with such appraisal, either party may within ten days appeal to the county commissioners of the county in which the land lies, by filing a copy of the proceedings and a claim of appeal with said commissioners, and the determination of a majority of said commissioners not residents of said town, shall be final. R. S. c. 15, § 9.

When any school district or town has erected or moved a building upon such lot or in any way improved the same, such improvement shall inure to the benefit of such town or district, and the same may be as completely occupied and controlled by such town or district as it would have been if such location had been in strict conformity to law. R. S. c. 15, § 10.

The legality of a tax assessed to build, repair or move a schoolhouse and to pay for a lot, shall not be affected by any mistake or error in the designation or location thereof. R. S. c. 15, § 11.

A plan for the erection or reconstruction of a schoolhouse voted by a town, shall first be approved by the superintending school committee, and in case no special building committee has been chosen by the town, said superintending school committee shall have charge of said erection or reconstruction; *provided, however*, that they may if they see fit, delegate said power and duty to the superintendent of schools. R. S. c. 15, § 12.

It shall be the duty of the state superintendent of public schools to procure architect's plans and specifications for not to exceed four room school buildings, and full detail working plans therefor. Said plans and specifications shall be loaned to any superintending school committee or school building committee desiring to erect a new school building. For the use of the state superintendent of public schools in procuring such plans and specifications the sum of two hundred dollars is hereby appropriated for the year nineteen hundred and nine and a like sum for the year nineteen hundred and ten. P. L. 1909 c. 88, § 1.

When the plans and specifications prepared by the state superintendent are not used, all superintending school committees of towns in which new schoolhouses are to be erected, shall make suitable provision for the heating, lighting and ventilating and hygienic conditions of such buildings, and all plans and specifications for any such proposed school building shall be submitted to and approved by the state superintendent of public schools and the state board of health before the same shall be accepted by the superintending school committee or school building committee of the town in which it is proposed to erect such building. P. L. 1909 c. 88, § 2.

In case no special building committee has been chosen by the town, the superintending school committee shall have charge of the erection or reconstruction of any school building, provided that said superintending school committee may, if they see fit, delegate said power and duty to the superintendent of schools. P. L. 1909 c. 88, § 3.

Any building which is used in whole or in part as a schoolhouse shall be provided with proper egresses or other means of escape from fire sufficient for the use of all persons therein

accommodated. These egresses and means of escape shall be kept unobstructed, in good repair and ready for use. Stairways on the outside of the building shall have suitable railed landings at each story above the first, accessible at each story from doors or windows and such stairways, doors or windows shall be kept clean of snow, ice and other obstructions. In school buildings of more than one story there shall be at least two separate means of egress by inside or outside stairway, and each story above the first shall be supplied with means of extinguishing fire consisting of pails of water or other portable apparatus, or of a hose attached to a suitable water supply and such appliance shall be kept at all times ready for use and in good condition. Upon written notification by the superintending school committee that any school building does not meet the specifications herein named, the municipal officers of the town shall at once proceed to correct the defects, and any failure so to act shall render the town liable to the provisions of section sixteen of chapter fifteen of the revised statutes. P. L. 1909 c. 100, § 1.

Every town shall raise and expend, annually, for the support of common schools therein, exclusive of the income of any corporate school fund or of any grant from the revenue or fund from the state, or of any voluntary donation, devise or bequest, or of any forfeiture accruing to the use of schools; not less than eighty cents for each inhabitant, according to the census by which representatives to the legislature were last apportioned, under penalty of forfeiting not less than twice nor more than four times the amount of its deficiency, and all moneys provided by towns, or apportioned by the state for the support of common schools, shall be expended for the maintenance of common schools established and controlled by the towns by which said moneys are provided, or to which said moneys are apportioned; but nothing in this section shall be so construed as to annul, or render void, the provisions made in section eighteen of this chapter for the establishment and maintenance of union schools by adjoining towns. The change from fifty-five to eighty cents does not take effect until January first, nineteen hundred and ten. R. S. c. 15, § 13.

All towns incorporated since seventeen hundred and eighty-eight, not formerly parts of other towns, which fail to account for the permanent school fund arising from sale or lease of school lands in said towns, shall annually raise and expend for the maintenance of common schools not less than forty-five

dollars in addition to the amount required by law to be raised and expended for the support of said schools. R. S. c. 15, § 14.

No money appropriated by law for public schools shall be paid from the treasury of any town, except upon the written order of its municipal officers; and no such order shall be drawn by said officers except upon presentation of a properly avouched bill of items. The unexpended balance of all moneys raised by towns, or received from the state, for the payment of wages and board of teachers, fuel, janitors' services, conveyance or tuition and board of scholars, shall be credited to the school resources for the year following that in which said unexpended balance occurred. This clause, relating to unexpended balances shall not apply to cities. R. S. c. 15, § 15.

When the governor and council have reason to believe that a town has neglected to raise and expend the school money required by law, or to employ teachers certificated as required by law, or to have instruction given in the subjects prescribed by law or to provide suitable text-books in the subjects prescribed by law, or faithfully to expend the school money received from the state, or in any way, to comply with the laws prescribing the duties of towns in relation to public schools, they shall direct the treasurer of state to withhold further payment to such town from the state school fund and mill tax until such town satisfies them that it has expended the full amount of school money as required by law and that it has complied in all ways with the law prescribing the duties of towns in relation to public schools. R. S. c. 15, § 16.

Sums received by any city, town or plantation from the distribution by section three of chapter one hundred and seventy-seven of the public laws of nineteen hundred and nine, shall be deemed to be raised by such city, town or plantation within the meaning of the revised statutes, chapter fifteen, section thirteen, as amended. P. L. 1909 c. 177, § 6.

The school moneys of every town shall be so expended as to give as nearly as practicable the same aggregate annual length of terms in all its schools, and every town shall make provision for the maintenance of all its schools for not less than twenty-six weeks annually. Any town failing to maintain its schools as provided in this section, shall be debarred from drawing its state school moneys, till it shall have made suitable provisions for so maintaining them thereafter. R. S. c. 15, § 17.

Adjoining towns, upon the written recommendation of the school committee of said towns, may by concurrent action maintain union schools for the benefit of parts of said towns constituting on March one, eighteen hundred and ninety-four, union school districts, or may establish such schools, and shall contribute to their support each in proportion to the number of scholars in each of said towns attending such schools. Said schools shall be under the management of the school committee of the town in which their schoolhouses are located. R. S. c. 15, § 18.

Towns shall expend the entire amount of the school fund and mill tax received from the state, together with the amounts arising from the eighty cents per capita, after January one, nineteen hundred and ten, as provided in section thirteen of said chapter fifteen and the funds arising from the various sources enumerated in the first four lines of section thirteen of said chapter and the funds arising from the provisions of section fourteen of said chapter, for the payment of teachers' wages and board, fuel, janitors' services, conveyance of scholars and tuition and board of scholars, as provided in section two and section fifty of said chapter fifteen and shall provide schoolbooks, apparatus and appliances for the use of pupils in the public schools, including all free high schools, at the expense of said town; and shall also pay for the necessary repairs of school buildings and insurance on same, if any, improvement and maintenance of school yards and playgrounds out of a sum or sums of money raised and appropriated for that purpose which shall be assessed like other money and shall be in addition to and independent of the amount which towns are required by law to raise, assess and expend for the support of common schools; *provided, however*, that any parent or guardian of any pupil in the public schools may, at his own expense, procure for the separate and exclusive use of such pupil, the text-books required to be used in such schools and no second hand books shall be purchased for the use of any school; any person violating this provision shall forfeit not exceeding five hundred dollars, to be recovered in an action of debt by any school officer or person aggrieved. R. S. c. 15, § 19.

School committees shall make such rules and regulations not repugnant to law, as they deem proper, for the distribution and preservation of schoolbooks and appliances furnished at the expense of the town. R. S. c. 15, § 20.

When a pupil in the public schools loses, destroys, or unnecessarily injures any such schoolbook or appliance, furnished such

pupil at the expense of said town, his parent or guardian shall be notified, and if the loss or damage is not made good to the satisfaction of such committee within a reasonable time, they shall report the case to the assessors, who shall include in the next town tax of the delinquent parent or guardian the value of the book or appliance so lost, destroyed or injured, to be assessed and collected as other town taxes. R. S. c. 15, § 21.

Any city or town may, in addition to the sum raised for the support of the common schools, raise and appropriate money for the support of evening schools, which shall admit persons of any age, shall teach only the elementary branches, and shall be under the direction and supervision of the superintending school committee. R. S. c. 15, § 22.

Any city or town may annually make provision for free instruction in industrial or mechanical drawing, to persons over fifteen years of age, either in day or evening schools, under direction of the superintending school committee. R. S. c. 15, § 23.

Any city or town may, in addition to the sum raised for the support of the common schools, raise and appropriate money for the support of manual training schools and may receive gifts and bequests for the use, maintenance and support of such schools. R. S. c. 15, § 24.

Such schools shall be under the control, direction and supervision of the superintending school committee, and shall admit such persons between the ages of six and twenty-one years, and shall give such courses of instruction as said committee may determine. Pupils in such schools shall be subject to the same conditions, rules and regulations as provided for public schools. R. S. c. 15, § 25.

Persons between the ages of five and twenty-one years living at any light station, shall be admitted to any public school in the state without paying tuition; such scholars shall be entitled to all privileges and benefits, and be subject to the same conditions, rules and regulations as scholars residing in the town in which they attend school. R. S. c. 15, § 26.

The age of pupils allowed to attend the public schools of the state is hereby fixed between the ages of five and twenty-one years. R. S. c. 15, § 27.

The assessors or municipal officers of each town, shall, or on before the first day of each May, make to the state superin-

tendent of public schools, a certificate, under oath, embracing the following items :

First. The amount voted by the town for common schools at the preceding annual meeting.

Second. The amount of school moneys payable to the town from the state treasury during the year ending with the first day of the preceding April.

Third. The amount of money actually expended for common schools during the preceding fiscal year of the town.

Fourth. The amount of school moneys unexpended at the expiration of the preceding fiscal year of the town.

Fifth. Answers to such other inquiries as are presented to secure a full and complete statement of school revenues and expenditures. R. S. c. 15, § 28.

Every town shall choose by ballot at its annual meeting a superintending school committee of three to hold office as provided in the following section and shall fill vacancies arising therein at each subsequent annual meeting. No person is ineligible to the office of superintending school committee, on account of sex. R. S. c. 15, § 29.

School committees first chosen shall designate by lot a member or members to hold office for one, two and three years respectively, in manner as follows: one for one year, one for two years and one for three years; and they shall certify such designation to the town clerk to be by him recorded; and thereafterwards one member shall be chosen by ballot at the annual meeting of the town, to hold office for three years. Said committee may fill vacancies occurring between annual meetings, and the term of office of any member of the committee so chosen shall expire at the next annual meeting. No member of the superintending school committee of any town shall be employed as teacher in any public school in said town. R. S. c. 15, § 30.

The provisions of the two preceding sections shall not apply to cities whose charters specify the methods of election and term of office of a superintending school committee or board of education; nor to towns, cities and incorporated districts authorized by private and special laws to choose school committees other than those herein provided for. R. S. c. 15, § 31.

A town failing to elect members of the superintending school

committee as required by law, forfeits not less than thirty, nor more than two hundred dollars. R. S. c. 15, § 32.

Superintending school committees shall serve without pay, unless otherwise voted by the town, but the superintendent shall receive for his services such sum as the town shall annually vote therefor, which sum shall in no case be less than two dollars a day for every day of actual service and necessary traveling expenses. R. S. c. 15, § 33.

The management of the schools and the custody and care, including repairs and insurance on school buildings, of all school property in every town, shall devolve upon the superintending school committee which shall annually, and as often as a vacancy shall occur, elect a superintendent of schools who shall not be a member of the committee. This section shall not apply to cities, nor to towns authorized by special laws to employ or choose superintendents in manner otherwise than as herein provided. R. S. c. 15, § 34.

Superintending school committees shall perform the following duties:

First. Direct the general course of instruction, and select a uniform system of text-books, due notice of which shall be given; no text-book thus introduced, shall be changed for five years unless by vote of the town; any person violating this provision shall forfeit not exceeding five hundred dollars, to be recovered in an action of debt by any school officer or person aggrieved. And when said committee have made such selection of schoolbooks, they may contract, under section nineteen, with the publishers for the purchase and delivery thereof; make such rules as they deem effectual for their preservation and return; or, if they are kept for sale, may regulate the sale and appoint an agent to keep and sell them, and fix the retail price, which shall be marked on the title page of each book.

Second. They shall make provision for the instruction of all pupils in schools supported by public money or under state control, in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system.

Third. After due notice and investigation they shall dismiss any teacher, although having the requisite certificate, who proves unfit to teach, or whose services they deem unprofitable to the school; and give to said teacher a certificate of dismissal

and of the reasons therefor, a copy of which they shall retain, and such dismissal shall not deprive the teacher of compensation for previous services.

Fourth. Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment.

Fifth. Exclude, if they deem it expedient, any person not vaccinated, although otherwise entitled to admission.

Sixth. Prescribe the sum, on payment of which persons of the required age, resident on territory, the jurisdiction of which has been ceded to the United States, included in or surrounded by the town, may attend school in the town.

Seventh. Determine what description of scholars shall attend each school, classify them, and transfer them from school to school where more than one school is kept at the same time. R. S. c. 15, § 35.

The superintendent of schools in every town shall be, ex-officio, secretary of the superintending school committee and shall perform such duties not herein enumerated as said committee shall direct.

First. He shall appoint suitable times and places for the examination of candidates proposing to teach in town, and shall give notice thereof by posting the same in two or more public places within the town at least three weeks before the time of said examination, or by the publication of said notice for a like time in one or more newspapers having the largest circulation in the county. Five days constitute the school week, and four weeks a school month.

Second. On satisfactory evidence that a candidate possesses a good moral character and a temper and disposition suitable for an instructor of youth, he shall examine him in reading, spelling, English grammar, geography, history, arithmetic, civil government, bookkeeping, and physiology with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system; and the elements of the natural sciences, especially as applied to agriculture, and such other branches as the superintending school committee desire to introduce into public schools, and particularly into the school for which he is examined; also as to his capacity for the government thereof.

Third. He shall give to each candidate found competent, a certificate that he is qualified to govern said school and instruct in the branches above named, and such other branches as may be necessary to be taught therein, or he may render valid by indorsement any graded certificates issued to teachers by normal school principals. No certificate shall be granted any person to teach in the public schools of the state, who has not passed a satisfactory examination in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system.

Fourth. He shall employ teachers, subject to the approval of the superintending school committee.

Fifth. He shall return under oath to the school committee, in April annually, a certified list of the names and ages of all persons in his town from five to twenty-one years, corrected to the first day of said month, leaving out of said enumeration all persons coming from other places to attend any college or academy, or to labor in any factory, or at any manufacturing or other business. R. S. c. 15, § 36.

He shall annually make returns to the state superintendent of public schools, of the number of persons between the ages of five and twenty-one years, corrected to the first day of April preceding the time of making said returns, and give full and complete answers to the inquiries contained in the blank forms furnished him by law; certify that such statement is true and correct, according to his best knowledge and belief; and transmit it to the office of the state superintendent on or before the first day of each May. He shall also furnish such other information relating to the public schools as the said superintendent shall at any time require of him. R. S. c. 15, § 37.

The return called for in section thirty-seven shall contain the following particulars:

First. The number of children between five and twenty-one years of age, belonging to his town, on the first day of April preceding.

Second. The whole number and the average number of scholars attending the summer schools; the whole number and the average, attending the winter schools, also the total number of different scholars attending school two weeks or more of the preceding year, as shall appear from the teachers' registers returnable as provided in section eighty-five.

Third. The average length of the summer schools in weeks; the average length of the winter schools in weeks; and the average length of the schools for the year.

Fourth. The number of male, and of female teachers employed in the public schools during any part of the year.

Fifth. The wages of male teachers a month, and the wages of female teachers a week, the cost of board to be added to the wages, in case the town pays the board. R. S. c. 15, § 38.

He shall examine the schools and inquire into the regulations and discipline thereof, and the proficiency of the scholars, for which purpose he shall visit each school at least twice each term. At the annual town meeting, he shall make a written report of the condition of the schools for the past year, the proficiency made by the pupils, and the success attending the modes of instruction and government thereof, and transmit a copy to the state superintendent of public schools. R. S. c. 15, § 39.

The school committees of two or more towns, having under their care and custody an aggregate of not less than twenty, nor more than fifty schools, may unite in the employment of a superintendent of schools, *provided* they have been so authorized by a vote of their towns at the regular town meetings, or special town meetings called for that purpose. *Provided further* that such union shall not take effect until the state superintendent of public schools shall have approved the certificate of union as hereinafter provided. But the committee of any town dissatisfied with the decision of the state superintendent may appeal to the governor and council who shall make the final decision relative thereto. R. S. c. 15, § 40.

The school committees of the towns comprising a union shall form a joint committee, and for the purposes of this section and the four following sections, said joint committee shall be held to be the agents of each town comprising the union. Said joint committee shall meet annually at a day and place agreed upon by the chairman of the committees of the several towns comprising the union, and shall organize by the choice of a chairman and a secretary. They shall determine the relative amount of service to be performed by the superintendent in each town, fix his salary, apportion the amounts thereof to be paid by the several towns, which amount shall be certified to the treasurers of said towns respectively and to the state superintendent of schools, together with the amount apportioned to each town: *provided* that the amounts so certified shall be in proportion to

the amount of service performed in the several towns. They shall choose by ballot a superintendent of schools for a term not exceeding five years, but the period of such election shall not exceed that for which the union of towns has been authorized. R. S. c. 15, § 41.

First. Whenever the chairman and secretary of said joint committee shall certify under oath to the state superintendent of schools, according to form prescribed by the state superintendent that a union has been maintained and a superintendent employed as provided in sections forty and forty-one of this chapter, which certification shall be made quarterly, on the first days of January, April, July and October of each year, then, upon approval of said certificate by the state superintendent of schools, payment shall be made out of the sum appropriated for superintendence of towns comprising school unions and out of any moneys in the treasury not otherwise appropriated to the superintendent so employed of a sum equal to twice the aggregate sum paid by the towns comprising the union, *provided* that the amount so paid for the benefit of a single union of towns shall not exceed eight hundred dollars in one year. R. S. c. 15, § 42.

Second. Whenever the chairman and secretary of school committees of towns and cities having under their care and custody an aggregate of more than fifty schools, shall certify under oath to the state superintendent of schools, the form of certificate to be determined by said state superintendent, that a superintendent of schools has been employed by them for one year, and the salary that he has received, then upon the approval of said certificate by the state superintendent of schools and presentation to the governor and council, a warrant shall be drawn upon the treasurer of the state for the payment to the treasurer of that town or city, of a sum equal to three-fifths the amount expended by said town or city for said superintendence, *provided* that the amount so paid for the benefit of a single town or city shall not exceed eight hundred dollars in one year. *Ib.*

The towns uniting for the purpose of employing a superintendent of schools shall appropriate for his salary their proportion of the sum paid said superintendent; and the amount to be paid by each town shall be determined by dividing the entire sum expended for superintendence among the towns comprising the union in the proportion of the service performed in each town. A union of towns formed under the provisions of sections

forty and forty-one shall continue for a period of three years unless sooner dissolved by a two-thirds vote of the joint committee. R. S. c. 15, § 43.

Persons employed to serve as superintendents of schools under section forty-one and section forty-two shall hold state certificates of superintendence grade which shall be issued upon such examination as may be prescribed by the state superintendent of public schools and they shall devote their entire time to superintendence. The powers and duties of said superintendents shall be the same as those prescribed for town superintendents in this chapter. R. S. c. 15, § 44.

No town shall receive state aid under section forty-two unless its appropriation and expenditure for superintendence have been exclusive of the amount required by law for common school purposes. If any part of the money raised by the towns or union of towns, or paid to them by the state for superintendence, is expended for any other purposes than those provided for in said section, then each person so misappropriating said money shall forfeit double the sum so misapplied, to be recovered in an action of debt, in the name and to the use of the town, by any inhabitant thereof; and no town or union of towns shall receive further aid under said section until the amount so misapplied has been raised and expended for superintendence by such town or union of towns. R. S. c. 15, § 45.

Towns may make such by-laws, not repugnant to law, concerning habitual truants, and children between six and seventeen years of age not attending school, without any regular and lawful occupation, and growing up in ignorance, as are most conducive to their welfare and the good order of society; and may annex a suitable penalty, not exceeding twenty dollars, for any breach thereof; but such by-laws must be first approved by a judge of the supreme judicial court. R. S. c. 15, § 46.

Truant officers elected as provided in section fifty-one shall alone make complaints for violations of said by-laws, and shall execute the judgments of the magistrate. R. S. c. 15, § 47.

Said magistrate, in place of fine, may order children proved to be growing up in truancy, and without the benefit of the education provided for them by law, to be placed for such periods as he thinks expedient, in the institution of instruction, house of reformation, or other suitable situation provided for the purpose under section forty-six. R. S. c. 15, § 48.

Every child between the seventh and fifteenth anniversaries of his birth and every child between the fifteenth and seventeenth anniversaries who cannot read at sight and write legible simple sentences in the English language shall attend some public day school during the time such school is in session, and an absence therefrom of one-half day or more shall be deemed a violation of this requirement; *provided* that necessary absence may be excused by the superintending school committee or superintendent of schools or teachers acting by direction of either; *provided also*, that such attendance shall not be required if the child obtained equivalent instruction, for a like period of time, in an approved private school or in any other manner approved by the superintending school committee; *provided, further*, that children shall not be credited with attendance at a private school until a certificate showing their names, residence and attendance at such school signed by the person or persons having such school in charge, shall be filed with the school officials of the town in which said children reside; and *provided, further*, that the superintending school committee may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend. All persons having children under their control shall cause them to attend school as provided in this section, and for every neglect of such duty shall be punished by a fine not exceeding twenty-five dollars or shall be imprisoned not exceeding thirty days. R. S. c. 15, § 49.

Children living remote from any public school in the town in which they reside may be allowed to attend the public schools, other than a high school approved as provided in section sixty-three, in an adjoining town, under such regulations and on such terms as the school committees of said town agree upon and prescribe, and the school committee of the town in which such children reside shall pay the sum agreed upon, out of the appropriations of money raised in said town for school purposes. Except as above provided, a child attending a public school, other than a high school approved as provided in section sixty-three, in a town in which his parent or legal guardian does not reside, after having obtained the consent of the school committee of such town, shall pay, as tuition, a sum equal to the average expense of each scholar in such school. R. S. c. 15, § 50.

Cities and towns shall annually elect one or more persons, to be designated truant officers, who shall inquire into all cases of neglect of the duties prescribed in section forty-nine and ascertain the reasons therefor and shall promptly report the same to the

superintending school committee, and such truant officers or any of them shall, when so directed by the school committee or superintendent in writing, prosecute in the name of the city or town, any person neglecting to perform the duties prescribed in said section, by promptly entering a complaint before a magistrate; and said officers shall, when notified by any teacher that any pupil is irregular in attendance, arrest and take such pupil to school when found truant; and further such officers shall enforce the provisions of sections one hundred and eighteen to one hundred and twenty, inclusive, of this chapter. Truant officers, when so directed in writing by the superintendent of schools or the superintending school committee of their respective towns, may visit the manufacturing, mechanical, mercantile and other business establishments in their several cities and towns during the hours in which the public schools of such city or town are in session, and ascertain whether any minors under the age of fifteen years are employed therein, and shall report any cases of such employment to the superintendent of schools or the superintending school committee of their city or town, and if employed therein contrary to the provisions of chapter forty, shall also report such illegal employment to the inspector of factories, workshops, mines and quarries. The owner, superintendent, overseer or agent of all manufacturing, mechanical, mercantile or other business establishments, upon request, shall produce for the inspection of such truant officers all certified copies of records of birth and baptism, passports and age and schooling certificates required to be kept on file in such establishments under chapter forty of the revised statutes. Every city or town neglecting to elect truant officers, and truant officers neglecting any duty required of them under the provisions of this chapter shall forfeit not less than ten nor more than fifty dollars. The municipal officers shall fix the compensation of the truant officers, elected as prescribed in this section. Superintending school committees may fill vacancies occurring during the year, and shall elect truant officers at their first meeting after the annual meeting of the town, in case the town neglects to do so, or the truant officers elect, or any of them, fail to qualify. R. S. c. 15, § 51.

If a child without sufficient excuse, shall be absent from school at six or more consecutive sessions during any term, he shall be deemed an habitual truant, and the superintending school committee shall notify him and any person under whose control he may be that unless he conforms to section forty-nine, the provisions of the two following sections will be enforced

against them; and if thereafter such child continues irregular in attendance, the truant officers or any of them shall, when so directed by the school committee or superintendent in writing, enforce said provisions by complaint. R. S. c. 15, § 52.

Any person having control of a child, who is an habitual truant, as defined in the foregoing section, and being in any way responsible for such truancy, and any person who induces a child to absent himself from school, or harbors or conceals such child when he is absent, shall be punished by a fine not exceeding twenty dollars or shall be imprisoned not exceeding thirty days. R. S. c. 15, § 53.

On complaint of the truant officer, an habitual truant, if a boy, may be committed to the State School for Boys, or if a girl, to the State Industrial School for Girls, or to any truant school that may hereafter be established. Police or municipal courts and trial justices shall have jurisdiction of such complaint and of the offenses described in sections forty-nine, fifty-one and fifty-three. All warrants issued by said courts or trial justices upon such complaint, or for an offense committed under said sections, and all legal processes issued by said courts or trial justices for the purpose of carrying into effect the provisions of this section and of said sections numbered forty-nine, fifty-one and fifty-three, may be directed to and executed by the truant officer, or either of the truant officers, of the town where the offense is committed. All fines, collected under said two last named sections, shall be paid to the treasurer of the city or town in which the offense is committed, for the support of the public schools therein. R. S. c. 15, § 54.

Any town which establishes and maintains a free high school as provided by this section and the ten following sections, for at least ten weeks in any one year, shall on complying with the conditions hereinafter set forth, receive from the state one-half the amount actually expended for instruction in said school, not exceeding two hundred and fifty dollars; provided, that no town shall receive such state aid unless its appropriation and expenditure for such school has been exclusive of the amounts required by law for common school purposes. Such aid shall be paid from the state treasury on and after the first day of each January, upon certification by the governor and council as provided by section sixty-five. But whenever a town or precinct desires to draw its state aid semi-annually, it shall be paid on and after the first day of July and January; provided, that the superintendent of such town makes,

semi-annually, before said days, the report required in section sixty-five. After July second, nineteen hundred and nine the portions of this section appearing in italics are annulled by chapter seventy-one, public laws of nineteen hundred and nine. R. S. c. 15, § 55.

Any town may establish and maintain not exceeding two free high schools; and in such case shall receive the same state aid as if the expenditures of both schools had been made for one. Two or more adjoining towns may unite in establishing and maintaining a free high school, and both shall receive the same state aid as if such school had been maintained by one town. Any town may, in addition to the sums raised for the support of high and common schools, raise and appropriate a sum for the payment of conveyance of pupils attending secondary schools, said sum to be expended under the direction of the superintending school committee. Towns shall receive in trust and faithfully expend gifts and bequests made to aid in the maintenance of free high schools, and shall receive aid in such cases to the same extent and on the same conditions as if such schools had been established and maintained by taxation; and any town shall receive such state aid on any expenditure for a free high school or schools, made from the funds or proceeds of the real estate of an academy or incorporated institution of learning, surrendered or transferred to such town for educational purposes; but if any part of the money so paid by the state, is expended for any other purpose than the support of such free high schools, as provided by this section, then each person so misapplying said money forfeits double the sum so misapplied, to be recovered in an action of debt, in the name and to the use of the town, by any inhabitant thereof; and no town shall receive further support from the state for any free high school, until the amount so received, but misapplied, has been raised and expended for such free high schools by such town. R. S. c. 15, § 56.

The inhabitants of any section of a town which fails or neglects to provide for the maintenance of free high schools, may organize a free high school precinct in the manner hereinafter provided, and may establish and maintain a free high school therein, and receive state aid the same as the town might have done; *provided*, that no more than two such free high schools shall be established in any town, and that the amount of aid extended to the precincts in any town shall not exceed the sum that the town might have received. On petition of any five voters resident in said section, reciting the limits of the precinct

proposed, the municipal officers of the town shall call a meeting of the voters within said limits by causing notices, specifying the time, place and purposes of said meeting, to be posted in two or more conspicuous places within said limits seven days before the time appointed. Said meeting shall choose a moderator and a clerk who shall be sworn, and shall, by a majority vote of those present and voting, determine whether said precinct shall be organized. It shall choose an agent who shall be duly sworn. Such precinct may continue its organization from year to year by the holding of meetings called in the manner aforesaid, so long as the town shall neglect or refuse to support free high schools. Sections of adjoining towns may organize as herein provided, and unite in the support of such schools. But no more than two such precincts shall exist at the same time in any town. R. S. c. 15, § 57.

Any town, precinct or union of towns or precincts, voting to establish a free high school as herein provided, may locate the same permanently, or vote that the terms thereof be held alternately in such places within the town or towns, precinct or precincts, as may be selected, and as may accept said school. The town or precinct, in which said school is thus held, shall supply appropriate equipments, and furnish and warm a suitable building for the same; *provided* that any schoolhouse within such town or precinct may be used for such free high school, when not required for ordinary school purposes. R. S. c. 15, § 58.

The course of study in the free high schools, shall embrace the ordinary English academic studies which are taught in secondary schools, especially the natural sciences in their application to mechanics, manufactures and agriculture; but the ancient or modern languages and music shall not be taught therein except by direction of the superintending school committees having supervision thereof. Such schools, when established by any town or union of the towns, shall be free to all the youth in such town or towns who have such scholastic attainments as will fit them to attend such schools with profit, and the superintendent, or superintending school committee, having supervision thereof shall make such examination of candidates for admission to said schools as they consider necessary. R. S. c. 15, § 59.

When such school is established by any precinct or union of precincts, it shall be free in the same manner to the scholars within such precincts, and open also to scholars passing the

required examination from without such precincts, but within the towns in which said precincts are situated, on payment to the agent of the precinct in which such school is located, of such tuition, to be fixed by the superintending school committee or committees having supervision of the same, as is equivalent to the cost a scholar of maintaining school, after deducting the aid extended by the state. Whenever in the judgment of the superintending school committees having the supervision of any free high school or schools, the number of pupils in the same may be increased without detriment, scholars from without the towns directly interested in such school or schools, may be admitted to the same on passing the required examination and paying such tuition as may be fixed by such committee, to the treasurer of the town in which the school is kept, when the school is maintained by a town or union of towns, or to the agent of the precinct in which the school is kept, when such school is maintained by a precinct or union of precincts. Ib.

Free high schools, established and maintained under the foregoing provisions, are subject to the laws relating to common schools, so far as applicable, except as otherwise provided. When established and maintained by a town, they shall be under the supervision and entire management of the superintending school committee of such town. When established and maintained by a union of towns, such school shall be under the supervision and entire management of the school committees of such towns, who constitute a joint board for that purpose. When established and maintained by any precinct, such school shall be under the supervision of the superintending committee of such town, or of the state superintendent, when the precinct so elects, and under the financial management of the agent of the precinct, who, in connection with said committee or superintendent, shall employ teachers for the same. When established and maintained by precincts composed of sections of adjoining towns, such school shall be under the supervision of the superintending school committee of such towns, who constitute a joint board for that purpose, and under the financial management of the agents of both precincts, who, in connection with said committees, shall employ the teachers. R. S. c. 15, § 60.

Towns and precincts may raise money for establishing and maintaining free high schools, and erecting buildings and providing equipments for the same, in the same manner as for

supporting common schools and erecting schoolhouses. R. S. c. 15, § 61.

Any town which does not maintain a free high school of standard grade may from year to year authorize its superintending school committee to contract with and pay the trustees of any academy in said town, or with the school board of any adjoining town for the tuition of scholars within such town in the studies contemplated by the seven preceding sections, under a standard of scholarship to be approved by such committee; and when such contract has been made with the trustees of any academy the school committee with an equal number from the board of trustees of such academy shall form a joint committee for the selection of all teachers and the arranging of the course of study in such academy, when such academy has less than ten thousand dollars endowment and the expenditure of any town for tuition in such academy, or in such free high school, shall be subject to the same conditions and shall entitle such town to the same state aid as if it had made such expenditure for a free high school. R. S. c. 15, § 62.

Any youth who resides with a parent or guardian in any town which does not support and maintain a free high school giving at least one four years' course properly equipped and teaching such subjects as are taught in secondary schools of standard grade in this state may attend any school in the state which does have such a four years' course and to which he may gain entrance by permission of those having charge thereof, provided said youth shall attend a school or schools of standard grade which are approved by the state superintendent of public schools, and provided also the said youth shall have satisfactorily passed an examination conducted by the superintendent of schools of the town in which he has residence, papers for said examination having been procured from the state superintendent of public schools. In such case the tuition of such youth, not to exceed thirty dollars annually for any one youth, shall be paid by the town in which he resides as aforesaid, as long as such youth maintains good standing in such school, and said tuition so paid shall be made a part of the high school fund of the town receiving the same; and towns shall raise annually, as other school moneys are raised, a sum sufficient to pay such tuition charges. R. S. c. 15, § 63.

When any town shall have been required to pay and has paid tuition as aforesaid the superintending school committee of such

town shall make a return under oath to the state superintendent of public schools before the first day of September for the preceding school year, stating the name of each youth for whom tuition has been paid, the amount paid for each, and the name and location of the school which each has attended and thereupon shall be paid, annually in the month of December, from the state treasury out of the appropriation for the support of free high school, to each town paying tuition and making return as aforesaid, a sum equal to two-thirds of the amount thus paid by such town not exceeding five hundred dollars. R. S. c. 15, § 64.

Superintendents shall, annually, before the first day of July, make returns under oath to the state superintendent, on blanks prepared and sent out by him, of the amount appropriated and the amount expended by each town or precinct for instruction in such free high schools during the current year; also of the amount appropriated and the amount expended for common school purposes by each town maintaining the same; the number of weeks during which such schools have been taught; the wages paid each teacher; the number of pupils registered; the average attendance; the number of pupils in each branch of study pursued, and the amount received for tuition. If the state superintendent is satisfied that the provisions of sections fifty-five to sixty-two have been complied with, he shall certify to the governor and council the sum which each town or precinct is entitled to receive from the state. Any town or precinct, dissatisfied with his decision, may appeal to the governor and council and the governor and council shall issue a certificate to the treasurer of the town or agent of the precinct, for such amount as they adjudge such town or precinct entitled to receive from the state treasury. Any person connected with the management of such free high schools, either as teacher, agent or superintendent, who in any way aids or abets in defrauding the state into the payment in support of said schools of more than is contemplated by this chapter, shall forfeit not less than five hundred dollars, or be imprisoned in the county jail not less than one year. R. S. c. 15, § 65.

When a free high school precinct votes to raise money for establishing and maintaining a free high school, its clerk shall forthwith, or within the time prescribed by the precinct, certify the amount thereof to the assessors of the town, and the time when it must be raised; and within sixty days after receiving

such certificate they shall assess it as they do town taxes, on the polls and estates of the residents and owners in the precinct at the time of raising said money, whether wholly in their town or not, and on the non-resident real estate in the precinct. They shall then make their warrant in due form of law, directed to any collector of their town if any, if not to a constable, requiring him to levy and collect such tax and pay it to the town treasurer within the time limited in the warrant; and they shall give a certificate of the assessment to such treasurer, and may abate such taxes as in the case of town taxes. R. S. c. 15, § 66.

The assessors may include in their assessment such sum over and above the sum committed to them to assess, not exceeding five per cent, thereof, as a fractional division renders necessary, and certify that fact to the town treasurer. R. S. c. 15, § 67.

The town treasurer shall pay the expense of assessing and collecting any free high school precinct tax out of the money of the precinct, upon the order of the selectmen. R. S. c. 15, § 68.

Section thirty-one of chapter ten, and all other sections relating to the same subject apply to taxes assessed by or for free high school precincts, so far as applicable; but the precinct and not the town is liable. R. S. c. 15, § 69.

The collector or constable, and the town treasurer, or treasurer and collector, if one person is both, each have the same powers and are subject to the same duties and obligations in relation to free high school precinct taxes, as to town taxes; and they and the assessors shall be allowed by the precinct for their services, a compensation proportionate to what they receive from the town for similar services. R. S. c. 15, § 70.

The money so raised and paid shall be at the disposal of the precinct agent, to be by him expended as provided in section sixty. R. S. c. 15, § 71.

The trustees of any academy or other corporation formed for educational purposes may by a majority vote of such of said trustees as reside in the state, surrender the whole, or any part of the property belonging thereto, to the municipal officers of any town, or the trustees of any school fund in any town in which said academy or corporation is situated, for turning the same into a free high school as hereinafter provided, and said municipal officers or trustees, for the time being, shall be a board of trustees to take and hold said property for maintaining a free high school; and upon receiving said property, they shall use

proper diligence to make the same produce income for the support of said free high school. R. S. c. 15, § 72.

When such vote is so passed, the treasurer of said trustees shall convey, assign and deliver to the municipal officers of said town, or the trustees of such fund, all property belonging to said academy or corporation for the purposes indicated by the preceding section. R. S. c. 15, § 73.

The municipality accepting the property in trust, as named in section seventy-two, shall apply the income thereof towards the support of a free high school, to be kept within said municipality, at least twenty-two weeks in each year, and provide suitable accommodations for the same, and the superintending school committee in said municipality shall determine the qualifications necessary to entitle any applicant to enter or attend said free high school, and no one shall attend it without certificate of said officers to that effect. R. S. c. 15, § 74.

All scholars residing within the municipality aforesaid, having such certificate, may attend said school without tuition fee, and all scholars not residents of said municipality, may attend said school upon such terms and conditions as said superintending school committee may impose. R. S. c. 15, § 75.

Whenever it shall be made to appear to the governor and council, from returns made as herein provided, that any incorporated academy in the state is prepared to give instruction equivalent to that required by law to be given in free high schools, that the pupils attending the said academy, are qualified to receive such instruction, and that the teachers in the said academy have the qualifications fitting them to give instruction in secondary school studies, such academy shall be entitled to receive annually from the state a sum not exceeding five hundred dollars in case it maintains an English secondary school course of study as prescribed by the state superintendent of public schools, or a sum not exceeding seven hundred and fifty dollars in case it maintains in addition to an English course, a college preparatory course, or a sum not exceeding one thousand dollars in case it maintains an English course, a college preparatory course and a training course for teachers, *provided* the courses of study herein named shall be subject to the approval of the state superintendent of public schools, and *provided*, that the amount paid by the state to any academy under this section shall be expended by the said academy for instruction during the year for which payment is made, and shall not exceed the

total income of the said academy from all other sources; and *provided further*, that in addition to the amount received from the state, a sum equal thereto shall be expended for instruction and maintenance of the academy during said year; and *provided further*, that every academy receiving money from the state under this section shall provide instruction as contemplated by this section for not less than thirty weeks in each year; and *provided further*, that no academy shall be credited with maintaining a course of study under this section unless the said academy shall have an average of not less than twelve students in said course. R. S. c. 15, § 76.

The governor and council may draw warrants on the treasurer of state for the payment annually to the legal representatives of such academies, as shall be entitled to receive money from the state under the preceding section, at the times and in the manner provided by law for the payment of money in aid of free high schools, the amounts to which they shall be severally entitled thereunder; *provided*, that no payment shall be made to any academy until the state superintendent of public schools shall have certified to the governor and council all the facts which by law are made necessary to entitle an academy to receive money from the state under the preceding section. R. S. c. 15, § 77.

Any town providing free tuition for its high school scholars in any academy, shall receive state aid to the amount of one-half the sum expended for such instruction, *provided*, no town shall receive more than two hundred and fifty dollars in any given year; and *provided further*, that no town shall receive state aid under this section if a free high school of standard grade is maintained in said town. R. S. c. 15, § 78.

No academy shall receive state aid under section seventy-six unless incorporated prior to May one, nineteen hundred and seven. R. S. c. 15, § 79.

No academy shall receive state aid under section seventy-six unless the average attendance in said academy for the year preceding or for five years next preceding shall exceed thirty students, and no academy shall receive to exceed five hundred dollars unless the average attendance in said academy for the year preceding shall exceed sixty students. R. S. c. 15, § 80.

No academy shall receive state aid under section seventy-six if said academy has an annual income from invested funds exceeding sixteen hundred dollars, and no academy shall receive state aid to exceed five hundred dollars in any given year pro-

vided the said academy has an annual income from invested funds exceeding one thousand dollars. See also chapter one hundred and two, public laws of nineteen hundred and nine, an act to encourage the teaching of manual training, domestic science and agriculture, post. R. S. c. 15, § 81.

Every educational institution receiving state aid, and the officers and teachers of every academy receiving money from the state under the six preceding sections, shall annually, on or before the first day of January, report to the state superintendent of public schools the total and average attendance, an itemized account of all the moneys received and expended during the preceding year, the number of instructors, number and length of terms, with attendance for each, and answer such other questions as he shall require, and shall make such further report to him as he may from time to time require. Such reports shall be published in the annual report of the state superintendent of public schools. Every such educational institution failing to comply with the above requirements shall forfeit whatever aid or assistance it would otherwise receive from the state. Wherever in sections seventy-six to eighty-two inclusive, the word "academy" occurs, it shall be construed to include "seminary or institute." R. S. c. 15, § 82.

Any incorporated academy in the state maintaining a course in manual training, domestic science or agriculture, approved by the state superintendent of schools, shall be entitled to receive annually from the state, in addition to the state aid, if any, now provided by law, and to be paid in the same manner, a sum equal to the amount expended by said academy for instruction in such course, not exceeding two hundred and fifty dollars for each of said courses. P. L. 1909 c. 102, § 1.

Chapter seventy-eight of the public laws of one thousand nine hundred and seven is hereby repealed. P. L. 1909 c. 102, § 2.

No school shall be regarded as a high school within the meaning of any of the provisions of chapter fifteen of the revised statutes unless such school shall be included in the following classes:

Class A. This class shall include such schools as maintain at least one approved course of study through four years of thirty-six weeks each and of standard grade, together with approved laboratory equipment, and shall employ at least two teachers, provided the town, precinct or union maintaining such school shall appropriate and expend for instruction therein at least

eight hundred and fifty dollars annually exclusive of all tuition received.

Class B. This class shall include such schools as maintain one approved course of study through at least two years of thirty-six weeks and of standard grade together with approved equipment, provided the town, precinct or union maintaining such school shall appropriate and expend for instruction therein at least five hundred dollars annually exclusive of all tuitions received.

Class C. This class shall include such schools as maintain at least one approved course of study through four years of thirty weeks each; provided the town, precinct or union maintaining such school shall appropriate and expend for instruction therein at least four hundred and fifty dollars annually exclusive of all tuitions received. P. L. 1909 c. 71, § 1.

A town, precinct or union maintaining a high school, as defined in section one of this act, shall be reimbursed by the state for two-thirds of the amount paid for instruction in such school; but in no case shall more than five hundred dollars be paid by the state to a town, precinct or union in any one year. P. L. 1909 c. 71, § 2.

A town, precinct or union maintaining a high school, as provided in class A of section one of this act, shall not be obliged to pay tuition under section sixty-three and sixty-four of chapter fifteen. A town, precinct or union maintaining a high school, as provided in class B of section one shall not be obliged to pay tuition for any pupil until he has completed the first two years of the course of the class B school, and for only two years of subsequent work. A town, precinct or union maintaining a high school, as provided in class C of section one, shall be obliged to pay tuition for such portion of a four years' course as may be determined by the state superintendent of public schools. P. L. 1909 c. 71, § 3.

All schools of secondary grade receiving state aid shall be inspected annually under the direction of the state superintendent of public schools, and for this purpose he shall be authorized to expend not to exceed two thousand dollars annually, which sum shall be paid from the state appropriation for the support of high schools; and he shall determine what schools are included in the classification of section one of this act, what schools maintain the courses of study, what schools are entitled

to state aid and what schools maintain approved courses for the reception of tuition scholars. P. L. 1909 c. 71, § 4.

After this act takes effect all other state aid for high schools as provided by law shall cease. P. L. 1909 c. 71, § 5.

State aid to free high schools under the provisions of chapter seventy-one of the public laws of nineteen hundred and nine shall be payable annually in the month of December. P. L. 1909 c. 196.

Presidents of colleges are removable at the pleasure of the trustees and overseers, whose concurrence is necessary for their election. R. S. c. 15, § 83.

No officer of a college shall receive as perquisites any fees for a diploma or medical degree conferred by such college, but such fees shall be paid into the college treasury. R. S. c. 15, § 84.

Every teacher of a public school shall keep a register thereof, containing the names of all the scholars who enter the school, their ages, the dates of each scholar's entering and leaving, the number of days during which each attended, the length of the school, the teacher's wages, a list of text-books used, and all other facts required by the blank form furnished him; such register shall at all times be open to the inspection of the school committee, and be returned to them at the close of the school. Teachers may be paid for their services at the close of each school month, but no teacher shall receive final payment for services for any term until the register herein described, properly filled, completed, and signed, is deposited with the school committee, or with a person designated by them to receive it. R. S. c. 15, § 85.

The presidents, professors and tutors of colleges, the preceptors and teachers of academies, and all other instructors of youth, in public or private institutions, shall use their best endeavors to impress on the minds of the children and youth committed to their care and instruction, the principles of morality and justice, and a sacred regard for truth; love of country, humanity and a universal benevolence; sobriety, industry and frugality; chastity, moderation and temperance; and all other virtues which ornament human society; and to lead those under their care, as their ages and capacity admit, into a particular understanding of the tendency of such virtues to preserve and perfect a republican constitution, secure the blessings of liberty, and to promote their future happiness; and the tendency of the opposite vices, to slavery, degradation and ruin; all teachers in the public schools

of the state shall devote not less than ten minutes of each week of the school term, to teaching to the children under their charge, the principles of kindness to birds and animals. R. S. c. 15, § 86.

Whoever teaches a public school without first obtaining a certificate from the superintendent of schools of the town, forfeits not exceeding the sum contracted for his daily wages, for each day he so teaches, and is barred from receiving pay therefor; and no certificate shall be valid for more than one year, without the approval of the superintendent of schools annually indorsed thereon. R. S. c. 15, § 87.

The following days shall be observed as school holidays, namely: New Year's day, January one; Washington's birthday, February twenty-two; Patriot's day, April nineteen; Memorial day, May thirty; Independence day, July four; Labor day, first Monday in September; Christmas day, December twenty-five; Thanksgiving and Arbor days, as appointed by the governor and council. *Provided, however,* that Arbor day shall not be recognized as a school holiday, unless observed by teacher and pupils for the purpose for which it is designated by the governor and council. All teachers of public schools in the state may close their schools on the days above mentioned and draw pay the same as if their schools had been in session upon those days. When any one of the above named holidays falls upon a Sunday, the Monday following shall be observed as a school holiday, with all the privileges applying to any of the days above named. February twelve shall be observed by the teachers and pupils in all the public schools of the state as Lincoln day, some part of which day, as far as may be expedient, shall be devoted to the study of the life and character of Abraham Lincoln. When Lincoln day falls on a Saturday or Sunday the observance of the same shall be as above stated on the following Monday. R. S. c. 15, § 88.

Whenever not less than thirty of the teachers and school officers of any county shall have formed an association under rules of government approved by the state superintendent of public schools, for the purpose of mutual improvement in the science and art of teaching, and of creating popular interest in, and diffusing a knowledge of the best methods of improving our public school system, by the holding of conventions at least once every year under the supervision of the state superintendent, the state shall defray the necessary expenses attending the

holding of such conventions, for which purpose the sum of one thousand dollars is hereby annually appropriated to be deducted and set aside therefor by the treasurer of state from the annual school fund of the state; *provided, however*, that no more than two such associations shall be formed in any county, and that the expenses as aforesaid of no more than two conventions of any such association in any year shall be defrayed by the state. R. S. c. 15, § 89.

Teachers of public schools may suspend their schools for not more than two days in any year during the sessions of such conventions within their counties and also for not more than two days in any year during the sessions of any state teachers' convention approved by the state superintendent of public schools, unless otherwise directed in writing by the school officers, and attend said conventions without forfeiture of pay for the time of such attendance, *provided* they shall present to the officers employing them, certificates signed by the secretaries of such conventions and countersigned by the state superintendent of public schools, showing such attendance. R. S. c. 15, § 90.

The governor and council may draw warrants on the treasurer of state for the payment of bills for the expenses provided for in section eighty-nine, when such bills shall have been approved by the state superintendent of public schools, *provided, however*, that no bills shall be so paid except those for advertising such conventions, and for services and actual traveling expenses of speakers and lecturers not residing in the counties in which such conventions are held. R. S. c. 15, § 91.

Plantations have the same powers and liabilities as towns for electing superintending school committees, superintendents of schools, treasurers and collectors, and for raising, assessing and collecting school money, to be apportioned and expended as in towns. The assessors of plantations may take a census of the inhabitants thereof, at the expense of the plantation, and when so taken, the money raised therein for schools shall be upon the basis of such census and not upon the census of the state. R. S. c. 15, § 92.

All moneys due plantations from the state treasury for school purposes, shall be paid to the treasurers of such plantations, under the same conditions as in case of towns, and the same shall be expended by such plantations, under the same restrictions and limitations as are required of towns. R. S. c. 15, § 93.

Whenever in any unorganized township in the state there shall be two or more children between the ages of five and twenty-one years, the state superintendent of public schools shall cause an enumeration of said children to be made, and returned to him, and shall provide for the schooling of said children, either by establishing a school in the township, or by sending the children to schools in adjoining towns or plantations, or both, as shall by him be deemed expedient. In case any of said children are, by the state superintendent, sent to schools in adjoining towns or plantations, said children so sent shall have the same rights in such school as children resident in said town or plantation. *Provided, however,* that in case the interest on the reserve fund in any unorganized township together with the amount arising from the per capita tax called for in this section, is not sufficient to provide schooling for the children of said township for at least twenty-six weeks in a year the remainder of the expense shall be paid from the fund appropriated by section ninety-seven. *Provided, further,* that no money shall be expended under this section for the benefit of any township until the inhabitants of said township shall have been assessed by the duly appointed agent therefor the sum of forty cents for each of said inhabitants resident therein on the first day of April, and said agent shall have made return of such assessment to the state superintendent of schools. See also chapter sixty-two, public laws of nineteen hundred and nine, an act to extend the privileges of secondary instruction to youths resident in unorganized townships, post. R. S. c. 15, § 94.

The state superintendent of public schools shall certify to the governor and council the number and residences of the children enumerated and schooled, as provided in the preceding section, together with the cost of schooling said children, and the governor and council shall direct the treasurer of state to pay the state superintendent of public schools so much of the interest on the reserved land fund of the township in which said children reside as, added to the amount received from the inhabitants of the township from the per capita tax, shall pay the expense of said school. The state superintendent of public schools shall pay to the treasurer of any town or plantation in which he may school any of said children, such amount for each scholar as shall be his proportional part of the cost of the school to which he is sent. R. S. c. 15, § 95.

The state superintendent of public schools may appoint agents for the several townships in which schools shall be established

under section ninety-four, who shall, under the direction of the state superintendent, enumerate the pupils, assess and collect the per capita tax, employ the teacher and attend to all necessary details in connection with said schools; for which work they shall be paid a sum not exceeding two dollars a day, when actually employed in this duty, and actual necessary traveling expenses. Said agents in the collection of the per capita tax aforesaid, shall have the same powers and may use the same methods as collectors of taxes in towns are authorized to exercise and use for the collecting of personal and poll taxes committed to them; said agents may act as truant officers in their several townships, and may in their discretion compel the regular daily attendance at school of every child in their townships between the seventh and seventeenth anniversaries of his birth by arresting and taking to school any child when absent therefrom, and any parent or guardian of any such child or children, willfully refusing to allow said children under his control to attend school, or opposing said agent in arresting and taking said children to school, may be prosecuted by said agent in the name of the state before the nearest trial justice, and if found guilty shall forfeit a sum not exceeding twenty dollars for the use of the schools in the township wherein said children are resident, or shall be imprisoned for not exceeding thirty days. The state superintendent may supply schoolbooks for the schools established under said sections under such conditions as to the purchase and care thereof as he may deem proper. R. S. c. 15, § 96.

For the purpose of carrying out the provisions of the three preceding sections, there is hereby appropriated the sum of fifteen thousand dollars annually, which sum shall be deducted and set aside therefor by the treasurer of state from the annual school funds of the state. R. S. c. 15, § 97.

The governor with the advice and consent of the council shall appoint a state superintendent of public schools, who shall continue in office three years, or during the pleasure of the executive; vacancies shall be filled by a new appointment for a like term. R. S. c. 15, § 98.

An office shall be provided for him at the seat of government, where he shall preserve all school reports of this state and of other states which he may receive, the returns from the various towns, and institutions of learning and such books, apparatus, maps, charts, works on education, plans for school buildings,

models, and other articles of interest to school officers and teachers as may be procured without expense to the state. R. S. c. 15, § 99.

In addition to the duties elsewhere specifically imposed on him his duties are as follows :

First. To exercise a general supervision of all the public schools, and to advise and direct the town committees and superintendents in the discharge of their duties, by circular letters and personal conference, devoting all his time to the duties of his office.

Second. To obtain information as to the school systems of other states and countries, and the condition and progress of public school education throughout the world ; to disseminate this information, with such practical hints upon the conduct of schools, improved systems of instruction, and the true theory of education as observation and investigation convince him to be important, by public addresses, circulars and articles prepared for the press, and by outlines, suggestions and directions concerning the management, discipline and methods employed in teaching, prepared for and distributed among the teachers of the schools and school officers of the state ; and to do all in his power to awaken and sustain an interest in education among the people, and to stimulate teachers to well-directed efforts in their work.

Third. To take such measures as he deems necessary to secure the holding of a state educational convention once each year, with a view of bringing together the teachers, school committees, school superintendents, and friends of education, for consultation with reference to the interest of public schools and the most approved method of instruction.

Fourth. To encourage the formation of county teachers' associations, approve rules of government therefor, and to supervise the conduct of conventions held by such associations. He shall also conduct summer training schools for teachers, whenever provision is made by the legislature for holding such schools. See chapter one hundred and eighty-eight, resolves of nineteen hundred and one.

Fifth. To prepare and cause to be printed and distributed such portions of the proceedings of state institutes or teachers' conventions as he deems important in the furtherance of education.

Sixth. Biennially, as soon as practicable after the adjournment of the legislature, to compile and distribute, in pamphlet form, to the municipal and school officers of the several towns, three thousand copies of the amended school laws of the state; and to prepare and issue thus biennially, such circulars of information and advice to school officers, relating to new school enactments, as he shall deem necessary for the intelligent and effectual enforcement of such enactments.

Seventh. To prescribe the studies to be taught in the common schools, reserving to town committees the right to prescribe additional studies.

Eighth. To furnish to the school officers of each town, proper blank books in which shall be kept complete and itemized records of all matters relating to moneys appropriated, received and expended for schools, which said books shall remain the property of the state.

Ninth. To assume the control and management of all free public schools established and maintained by gifts or bequests, when said gifts or bequests are conditioned upon said state superintendent assuming such control and management; and he shall carry out the provisions upon which such gifts or bequests are conditioned, when said conditions are approved by the governor and council.

Tenth. To perform all duties imposed upon him by any charter or charters granted by the legislature to educational institutions in the state.

Eleventh. Annually, to report to the governor and council the result of his inquiries and investigations, and the facts obtained from the school returns, with such suggestions and recommendations as in his judgment will best promote the improvement of public schools. R. S. c. 15, § 100.

The state superintendent shall prepare and furnish to the town officers such blanks as he deems proper to secure the fiscal returns required in section twenty-eight. He shall return to the treasurer of state on the first day of July annually, a list of such towns as have made such fiscal returns; and no school moneys shall be paid by the treasurer of state to any town, so long as it neglects to make such returns. R. S. c. 15, § 101.

He shall prepare and print blank forms for all other returns required by law, or deemed by him necessary, and shall, on the first day of each March, forward to the superintendents of

schools of the several towns, blanks for the annual school return, and registers for the school year commencing on the first day of April following. R. S. c. 15, § 102.

He shall, on the first day of each June, notify the school committee of any town whose returns were not received at his office in May, and shall, annually, ascertain on the first day of July the number of children between five and twenty-one years of age, in the towns from which returns are received, and furnish a list thereof to the treasurer of state. R. S. c. 15, § 103.

He shall cause to be held, at such convenient times and places as he may from time to time designate, public examinations of candidates for the position of teacher in the public schools of the state. Such examinations shall test the professional as well as the scholastic abilities of the candidates, and shall be conducted by such persons and in such manner as he may from time to time designate. Due notice of the time, place and other conditions of the examinations shall be given in such public manner as he may determine. R. S. c. 15, § 104.

A certificate of qualification shall be given to all candidates who pass satisfactory examinations in such branches as are required by law to be taught, and who in other respects fulfill the proper requirements. Such certificate shall be either probationary or permanent and shall indicate the grade of schools which the person named is qualified to teach. R. S. c. 15, § 105.

A list of approved candidates shall be kept in the office of the state superintendent, and copies of the same with such information as may be desired shall be sent to school committees and superintendents upon their request. R. S. c. 15, § 106.

The certificates issued under the provisions of section one hundred and five shall be accepted by school committees and superintendents in lieu of the personal examination and certification required by section thirty-six. R. S. c. 15, § 107.

A sum not exceeding five hundred dollars may be annually expended for the necessary and contingent expenses of carrying out the provisions of the four preceding sections. R. S. c. 15, § 108.

The northern normal school at Farmington, the eastern normal school at Castine, the western normal school at Gorham and Aroostook county normal school at Presque Isle, shall be conducted for the purposes and upon the principles herein set forth. See also chapter forty-four, public laws of nineteen hundred and

nine, an act to establish an additional normal school to be located at Machias in the county of Washington, post.

First. They shall be thoroughly devoted to the training of teachers for their professional labors.

Second. The course of study shall include the common English branches in thorough reviews, and such of the higher branches as are especially adapted to prepare teachers to conduct the mental, moral and physical education of their pupils.

Third. The art of school management, including the best methods of government and instruction, shall have a prominent place in the daily exercises of said schools.

Fourth. Said schools, while teaching the fundamental truths of Christianity, and the great principles of morality, recognized by law, shall be free from all denominational teachings, and open to persons of different religious connections on terms of equality.

Fifth. The principals of the normal schools and of all other schools in which normal departments are supported, wholly or in part, by the state, shall keep a register containing the names of all students entering such schools or departments, the date of entering and leaving, their ages, number of days' attendance, the length of the term, a list of text-books used, and all other information required in the blanks furnished by the state superintendent. Such register and blanks shall be returned to said superintendent by the first day of each December, and the information so furnished shall appear in his annual report, for the use of the legislature. R. S. c. 15, § 109.

The course of study shall occupy two years with suitable vacations; and with the terms of admission shall be arranged by said superintendent, subject to the approval of the governor and council. The trustees may arrange for a course of study, occupying three or four years, for such students as elect to pursue the same. R. S. c. 15, § 110.

Any student who completes the course of study prescribed, and otherwise complies with the regulations of the school, shall receive a diploma certifying the same. R. S. c. 15, § 111.

Applicants for admission shall be sixteen years of age if females, and seventeen if males, and shall signify their intention to become teachers and come under obligation to teach in this state for at least one year, and if they receive a diploma, two years after they have graduated; on these conditions they shall be received without charge for tuition. R. S. c. 15, § 112.

Said schools are under the direction of a board of nine trustees, seven of whom shall be appointed by the governor with the advice and consent of the council, for not more than three years under one appointment; and the governor and state superintendent of public schools are, by virtue of their office, members of the board. Said board has charge of the general interests of said schools; shall see that the affairs thereof are conducted as required by law and by such by-laws as the board adopt; employ teachers and lecturers for the same; and, annually, on the first day of December lay before the governor and council, for the information of the legislature, a financial statement, furnishing an accurate detailed account of the receipts and expenditures for the school year preceding. R. S. c. 15, § 113.

The trustees of state normal schools shall maintain for not less than eight months annually, the Madawaska Training School, at Fort Kent, for the purpose of training persons to teach in the common schools of Madawaska territory, so called, which school shall be under their control and direction, in the same manner and to the same extent as the other state normal schools. R. S. c. 15, § 114.

For the support of the four normal schools and the Madawaska Training School, the sum of sixty-two thousand five hundred dollars is appropriated for the year nineteen hundred and nine and the sum of sixty-five thousand dollars is annually appropriated thereafter, to be expended under the direction of said trustees, which sum the treasurer of state shall deduct for said purpose from any school money raised for the support of common schools. The governor and council may from time to time, as they think proper, draw warrants therefor on said treasurer in favor of said trustees. R. S. c. 15, § 115.

Upon the request of the parents or guardians, the governor may, with the approval of the council, send such blind children as he may deem fit subjects for education, for a term not exceeding ten years, and thereafter in the discretion of the governor and council, in the case of any pupil, to the Perkins Institute for the blind at South Boston, Massachusetts. In the exercise of the discretionary power conferred by this section, no distinction shall be made on account of the wealth or poverty of the parents or guardians of such children. No such pupil shall be withdrawn from such institution except with the consent of the proper authorities thereof or of the governor; and the sums necessary for the support and instruction of such pupils in such institution, including all traveling expenses of such pupils

attending such institution shall be paid by the state; *provided, however*, that nothing herein contained shall be held to prevent the voluntary payment of the whole or any part of such sums by the parents or guardians of such pupils. R. S. c. 15, § 116.

Forfeitures under this chapter, not otherwise provided for, may be recovered by indictment, and shall be paid into the treasury of the town where they occurred, for the support of schools, therein, in addition to the amount required by law to be raised; but the costs of prosecution shall be paid into the county treasury; any town neglecting for one year, so to expend such money, forfeits an equal sum to any person suing therefor in an action of debt. R. S. c. 15, § 117.

Whoever, whether a scholar or not, enters any schoolhouse or other place of instruction, during or out of school hours, while the teacher or any pupil is present, and willfully interrupts or disturbs the teacher or pupils by loud speaking, rude or indecent behavior, signs or gestures, or willfully interrupts a school by prowling about the building, making noises, throwing missiles at the schoolhouse, or in any way disturbing the school, forfeits not less than two, nor more than twenty dollars, to be recovered as aforesaid, or on complaint. R. S. c. 15, § 118.

If a minor injures or aids in injuring any schoolhouse, outbuildings, utensils or appurtenances belonging thereto; defaces the walls, benches, seats or other parts of said buildings by marks, cuts or otherwise, or injures or destroys any school property belonging to a town, such town by a truant officer thereof, may recover of his parent or guardian, in an action of debt, double the damage occasioned thereby. R. S. c. 15, § 119.

Whoever defaces the walls, benches, seats, blackboards or other parts of any schoolhouse or outbuildings belonging thereto, by obscene pictures, language, marks or descriptions, shall be fined not exceeding ten dollars, on complaint made within one year. R. S. c. 15, § 120.

If an innholder, confectioner, or keeper of a shop, boarding house, or livery stable, gives credit for food, drink or horse or carriage hire, to any pupil of a college or literary institution in violation of its rules he forfeits a sum equal to the amount so credited, whether it has been paid or not, to be recovered in an action of debt by the treasurer of such institution; half to its use, and half to the town where it is located; and no person shall be licensed by the municipal officers for any of said

employments, if it appears that within the preceding year he had given credit contrary to the provisions hereof. R. S. c. 15, § 121.

The treasurer of state shall keep a separate account of all moneys received from sales of lands appropriated for the support of schools or from notes taken therefor, and of any other moneys appropriated for the same purpose; and such sum shall constitute a permanent school fund, which may be put at interest as the legislature directs. A sum equal to six per cent of the amount of such fund, and one-half the sum received by the state from the tax on the franchises of savings banks, and one-half the sum assessed upon the deposits of trust and banking companies, shall be annually appropriated to the support of common schools, and distributed among the several towns according to the number of children therein between five and twenty-one years of age. R. S. c. 15, § 122.

The treasurer shall, immediately after the first day of July, apportion to the towns all the state school funds for the year, according to the list of children furnished by the state superintendent of public schools, as provided in section one hundred and three. The number of scholars belonging to a town from which either the school committee or the municipal authorities have failed to make the returns required by law, shall be reckoned by taking the number used as the basis of the last apportionment, and deducting all scholars set off to other towns, or incorporated into a new town within a year, and one-tenth of the remainder, and the residue shall be the basis of the new apportionment. Immediately after making the apportionment, the treasurer shall notify each town of its proportion; which shall not be paid to any town until its returns, both common school and fiscal, are made to the state superintendent of public schools, nor so long as any state tax assessed upon such town remains unpaid. R. S. c. 15, § 123.

A tax of one and one-half mills on a dollar shall annually be assessed upon all the property in the state according to the valuation thereof, and shall be known as the mill tax for the support of common schools. R. S. c. 15, § 124. See fourth section below.

This tax shall be assessed and collected in the same manner as other state taxes, and be paid into the state treasury and designated as the school mill fund. R. S. c. 15, § 125.

This fund shall be distributed by the treasurer of state on the first day of January, annually, to the several cities, towns and plantations according to the number of scholars therein, as the same shall appear from the official return made to the state superintendent of public schools for the preceding year. R. S. c. 15, § 126.

All of the school mill fund not distributed or expended during the financial year, shall at its close be added to the permanent school fund. R. S. c. 15, § 127.

A tax of one and one-half mills on a dollar shall annually be assessed upon all of the property in the state according to the valuation thereof and shall be known as the tax for the support of the common schools. P. L. 1909 c. 177, § 1.

This tax shall be assessed and collected in the same manner as other state taxes and shall be paid into the state treasury and designated as the common school fund. P. L. 1909 c. 177, § 2.

One-third of this fund shall be distributed by the treasurer of state on the first day of January, annually, to the several cities, towns and plantations according to the number of scholars therein, as the same shall appear from the official returns made to the state superintendent of public schools for the preceding year and the remaining two-thirds of said fund shall be distributed by the treasurer of state on the first day of January, annually, to the several cities, towns and plantations according to the valuation thereof as the same shall be fixed by the state assessors, for the preceding year. P. L. 1909 c. 177, § 3.

All of the said fund not distributed or expended during the financial year, shall at its close, be added to the permanent school fund. P. L. 1909 c. 177, § 4.

All moneys provided by towns, or apportioned by the state for the support of common schools, shall be expended for the maintenance of common schools, established and controlled by the towns by which said moneys are provided, or to which said moneys are apportioned. P. L. 1909 c. 177, § 5.

Sums received by any city, town or plantation from the distribution provided by section three, shall be deemed to be raised by such city, town or plantation within the meaning of revised statutes, chapter fifteen, section thirteen, as amended. P. L. 1909 c. 177, § 6.

The passage of this act shall in no wise affect the provisions of sections one hundred twenty-four, one hundred twenty-five,

one hundred twenty-six and one hundred twenty-seven of chapter fifteen of the revised statutes, or of section two of chapter one hundred and eleven of the public laws of nineteen hundred and seven. P. L. 1909 c. 177, § 7.

The treasurer of state shall immediately after the first day of July, nineteen hundred and ten, and annually thereafter deduct the sum of twenty thousand dollars from the state school funds and the same shall be set aside and denominated the school equalization fund which shall be distributed in the manner hereinafter provided. P. L. 1909 c. 198, § 1.

Every town which raises for the support of common schools four mills or more on its valuation as fixed by the state assessors shall receive the following year from the school equalization fund herein provided a sum equal to ten per cent of its apportionment of the state school funds for the preceding year. Such portion of the school equalization fund as any town may be entitled to receive shall be paid by the treasurer of state at the same time and in the same manner prescribed for the payment of state school funds. The state superintendent of public schools shall annually, on or before July first, file with the treasurer of state a list of towns entitled to receive the benefits of this act. The first apportionment under the provision of this act shall be made immediately after the first day of July, nineteen hundred and ten. P. L. 1909 c. 198, § 2.

All of the school equalization fund not distributed nor expended during the financial year shall at its close be added to the permanent school fund. P. L. 1909 c. 198, § 3.

The school committee of every city and town shall appoint one or more school physicians and shall assign one to the medical inspection of not over one thousand pupils of the public schools within its city or town, and shall provide them with all proper facilities for the performance of their duties as prescribed in this act, *provided, however*, the said committee has been so authorized by vote of town at regular town meeting or at a special town meeting called for that purpose. P. L. 1909 c. 73, § 1.

Every school physician shall make a prompt examination and diagnosis of all children referred to him as hereinafter provided, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require. P. L. 1909 c. 73, § 2.

The pupils so examined by school physicians when treatment is necessary shall not be referred to the school physicians for

such treatment except the school physician be the regular family physician of such pupil, but shall be referred to the regular family physician of such pupil through the parents or guardian. P. L. 1909 c. 73, § 3.

The school committee shall cause to be referred to a school physician for examination and diagnosis every child returning to a school without a certificate from the board of health or family physician after absence on account of illness or from unknown cause; and every child in the schools under its jurisdiction who shows signs of being in ill health or of suffering from infectious or contagious diseases, unless he is at once excluded from school by the teacher; except that in case of schools in remote and isolated situations, the school committee may make such other arrangements as may best carry out the purposes of this act. P. L. 1909 c. 73, § 4.

The school committee shall cause notice of disease or defects, if any, from which any child is found to be suffering to be sent home to his parents or guardian. Whenever a child shows symptoms of small-pox, scarlet fever, measles, chicken pox, tuberculosis, diphtheria or influenza, tonsillitis, whooping cough, mumps, scabies or trachomo, he shall be sent home immediately or as soon as safe and proper conveyance can be found, and the board of health and superintendent of schools shall at once be notified. P. L. 1909 c. 73, § 5.

The school committee of every city or town shall cause every child in the public schools to be separately and carefully tested and examined at least once in every school year to ascertain whether he is suffering from defective sight or hearing or from any other disability or defect tending to prevent his receiving the full benefit of his school work, or requiring a modification of the school work in order to prevent injury to the child or to secure the best educational results. Tests of sight and hearing shall be made by the teachers or by the school physicians. The committee shall cause notice of any defect or disability requiring treatment to be sent to the parent or guardian of the child, and shall require a physical record of each child, to be kept in such form as the state superintendent of public schools shall prescribe after consultation with the state board of health. P. L. 1909 c. 73, § 6.

The state superintendent of public schools shall prescribe after consultation with the state board of health the directions for tests of sight and hearing, and shall prescribe and furnish to

the school committees suitable rules of instruction, test cards, blanks, record books and other useful appliances for carrying out the purposes of this act. The state superintendent of public schools may expend during the year nineteen hundred and nine a sum not greater than five hundred dollars for the purpose of supplying the material required for this act. P. L. 1909 c. 73, § 7.

Expenses which a city or town may incur by virtue of the authority herein vested in the school committee shall not exceed the amount appropriated for that purpose in cities by the city council and in towns by a town meeting. The appropriation shall precede any expenditure of any indebtedness which may be incurred under this act and the sum appropriated shall be deemed sufficient appropriation in the municipality where it is made. Such appropriation need not specify to what section of the act it shall apply and may be voted as a total appropriation to be applied in carrying out the purposes of this act. P. L. 1909 c. 73, § 8.

The provisions of this act shall apply only to cities and towns having a population of less than forty thousand inhabitants. P. L. 1909 c. 73, § 9.

The money arising from the sale of timber and grass, or from trespasses on reserved lands, paid into the treasury of the county in which the township is situated, or into the state treasury, constitutes funds for school purposes, of which the income only shall be expended and applied as is by law provided. R. S. c. 7, § 17.

The forest commissioner shall take such measures as the state superintendent of public schools and the president of the University of Maine may approve, for awakening an interest in behalf of forestry in the public schools, academies and colleges of the state and of imparting some degree of elementary instruction upon this subject therein. R. S. c. 7, § 65.

The Maine School for the Deaf is hereby established—to be devoted to the education and instruction of deaf and dumb children. S. L. 1897 c. 446, § 1.

Said school shall be located at Portland, in the county of Cumberland, and the governor and council are hereby authorized, on behalf of the state, to accept a conveyance from the city of Portland of the school lot, building and fixtures now used as a school for the deaf in said Portland, upon the condition that the state shall hereafter assume the entire charge,

responsibility and expense of maintaining said school. S. L. 1897 c. 446, § 2.

The government of said school is hereby vested in a board of five trustees, to be appointed by the governor, with the advice and consent of the council, to hold office for a term of five years, except, however, that the trustees first appointed shall hold office, one for one year, one for two years, one for three years, one for four years, and one for five years. S. L. 1897 c. 446, § 3.

The trustees shall have charge of the general interests of the school and see that its affairs are conducted in accordance with law and such by-laws as they may adopt; they may adopt by-laws which shall be valid when sanctioned by the governor and council; they may employ a principal and such teachers and other employees as they may deem advisable and fix the compensation of the same, subject to the approval of the governor and council; they may from time to time prescribe the system of education and course of study to be pursued in the school and shall be allowed for their services their actual expenses and two dollars a day when actually employed. S. L. 1897 c. 446, § 4.

With the consent of its parent or guardian, the trustees may admit to said school, for a term not exceeding twelve years, any deaf or dumb child residing in this state and not less than five years of age, who shall not be withdrawn or discharged from said school, except with the consent of the trustees or the governor and council, and the sums necessary for the support and instruction of such children while attending said school, shall be paid by the state. S. L. 1897 c. 446, § 5.

Deaf and dumb children residing in other states may, at the discretion of the trustees, be admitted to said school upon the payment by their parents or guardian of a reasonable compensation to be fixed by the trustees. S. L. 1897 c. 446, § 6.

Resolved, That the sum of two thousand five hundred dollars be appropriated annually, from the state school fund, to defray the expenses of holding at least four summer training schools for teachers and for the purpose of preparing and distributing among the teachers of the schools and school officers of this state, outlines, suggestions and directions concerning the management, discipline and methods employed in teaching, for the purpose of promoting improved systems of instruction; said schools to be conducted by and said documents to be prepared

and distributed under the direction of the state superintendent of public schools. The governor and council are hereby authorized to draw their warrant from time to time for the expenditure of said sum, upon the presentation of bills properly avouched by said superintendent. Resolves 1901 c. 188.

The state shall establish and maintain a school for the care and education of the idiotic and feeble minded six years of age and upward, which shall be known as the Maine School for Feeble Minded. All such feeble minded persons supported by towns in the state, who, in the judgment of the municipal officers of towns or state board of charities are capable of being benefited by school instruction, shall be committed to this institution. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 1.

The governor shall, with the advice of the council, appoint five persons, all of whom shall be inhabitants of this state and one of that number shall be a female, to be trustees of such school. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 2.

The trustees shall be appointed as follows: The first three to serve for two years, the other two for four years, and thereafter said trustees shall be appointed to serve for four years. Ib.

The said trustees shall have the general management and supervision of said school and one or more of said trustees shall visit said school as often as once each month, and said board of trustees shall annually on or before the first day of October of each year furnish a report to the governor and council containing a history of the school for the year and a complete statement of all accounts, with all the funds, general and special, appropriated or belonging to said school with a detailed statement of disbursements. Ib.

All indigent and destitute persons in this state, who are proper subjects for said schools, and have no parents, kinsmen or guardian able to provide for them, may be admitted as state charges and all other persons in this state, who are proper subjects for said school when parents, kinsmen or guardian bound by the law to support such persons are able to pay, shall pay such sum for care, education and maintenance of such persons as the trustees shall determine, and such persons from other states having no such institution and similar schools may be received into such school when there is room for them without excluding state charges, at a cost to each person or those who are legally responsible for their maintenance at a cost of not less than three

dollars and twenty-five cents per week. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 3.

The governor shall be, ex-officio, a member of the board of trustees of said school and shall annually visit said school. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 4.

Whenever it is made to appear, upon application to the judge of probate for any county and after due notice and a proper hearing, that any person resident in said county or any inmate of the Maine Industrial School for girls, the State School for Boys, the Bath Military and Naval Orphan Asylum or any person supported by any town, is a fit subject for the Maine School for Feeble Minded, such judge may commit such person to said school by an order of commitment directed to the trustees of said school for feeble minded accompanied by a certificate of two physicians who are graduates of some legally organized medical college and have practiced three years in this state, that such a person is a proper subject for said institution. Whenever, upon such application, there is occasion for the judge of probate to attend a hearing on days other than days fixed as the regular day for holding the probate court, said judge of probate shall be allowed five dollars per day for his services and expenses, which shall be paid by the county treasurer upon the certificate of the county commissioners. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 5.

Any order of committal under this act shall be subject to appeal in the same manner by the same persons and to the same extent that decrees of the judge of probate appointing guardians over persons alleged to be insane or incompetent or spendthrift, and no committal under this act shall bar habeas corpus proceedings, but the court upon habeas corpus proceedings may confirm the order of commitment whenever justice requires. Any inmate of the Maine School for the Feeble Minded may be discharged by any three of the trustees or by a justice of the supreme or superior court of the state whenever a further detention in such school in their opinion is unnecessary, but any person so discharged who was under sentence of imprisonment at the time of his commitment, the period of which shall not have expired, shall be committed or remanded to prison for such unexpired time. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 6.

Feeble minded persons shall be admitted to the institution in the following order: First, feeble minded persons who are now

in public institutions supported entirely at public expense; second, feeble minded persons in public institutions not supported as aforesaid; third, feeble minded persons who are not in any institution of the state, who have no parents, kinsmen or guardian able to provide for them, or who are committed by a judge of probate; fourth, those residing within the state whose parents, kinsmen or guardian bound by law to support such persons are able to pay; fifth, persons of other states whose parents, kinsmen or guardian are willing to pay. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 7.

The governor and council shall select and purchase a suitable site for said school and home and the board of trustees, as soon as appointed and organized, shall proceed as soon as practicable to erect thereon and properly furnish and equip suitable buildings and structures to accomplish the objects set forth in this act. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 8.

Said trustees shall have power to make all necessary rules and regulations as to admission to said institution and for the government and control of said institution and its inmates, and to do everything necessary to properly care for and educate the feeble minded of the state. P. L. 1907 c. 44 as amended by P. L. 1909 c. 167, § 9.

For all bills contracted by the governor and council as aforesaid in purchasing a site the governor shall draw his warrant upon any money in the treasury to pay the same not otherwise appropriated, and all bills contracted by the trustees in erecting, repairing and equipping suitable buildings and operating the institution shall each year be audited by the governor and council, and the governor shall draw his warrant upon any money in the treasury to pay the same not otherwise appropriated. Ib.

A sum of money not exceeding sixty thousand dollars shall be appropriated under this act to be used and expended for the purposes therein named within the next two years. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 10.

The trustees shall receive five dollars per day when employed and actual expenses. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 11.

All acts and parts of acts inconsistent with this act, are hereby repealed. P. L. 1907 c. 44, as amended by P. L. 1909 c. 167, § 12.

Whenever any school building, church, or other public build-

ing is heated by a steam plant, located in, under or near such building, such steam plant shall be in charge of a person qualified as provided by this act. P. L. 1907 c. 82, § 1.

The municipal officers of any town or city in which any of the buildings enumerated in the preceding section, heated by steam, are located, shall require the person or persons contemplating taking charge of the steam plant for such purpose, to be first examined by them, and they shall require him to produce before them proof of his competency to have charge of such steam plants; and unless the person so applying has been licensed as an engineer, or has had previous experience as a machinist, or as an engineer of a steam plant, he shall be required to satisfy said municipal officers that he possesses the requisite qualifications and experience to assume charge of the particular plant which he desires permission to operate; and if said municipal officers, after such examination, are satisfied that the applicant possesses the requisite qualifications for such work, and is of temperate habits, they, or the majority thereof, shall issue under their hands a certificate in the following form:

STATE OF MAINE.

City [or Town] of ———.

This is to certify that ——— having made application to the municipal officers of the city [or town] of ——— for permission to take charge of, and operate a steam plant located in said city [or town], [*here describe the nature of the steam plant of which the applicant is authorized to have charge, and its location*]; and having produced evidence of his competency to act in said capacity, we have issued to him this certificate as provided by chapter ——— of the public laws, approved on the ——— day of March, nineteen hundred and seven.

P. L. 1907 c. 82, § 2.

Said certificate when issued shall be filed in the office of the city or town clerk, and such clerk shall issue and deliver to said applicant a duly attested copy of such certificate, and the copy so issued shall be posted by the holder thereof, in a conspicuous place in or near the room in which the boiler to be operated is located. Ib.

It shall be unlawful for the municipal officers of any city or town to issue the certificate provided for by this act without receiving proof that the person to whom such certificate is issued has had experience in such work, and is in all respects qualified to discharge the duties referred to in the certificate granted, and is also of temperate habits. P. L. 1907 c. 82, § 3.

Whenever the municipal officers of any town or city receive notice in writing, signed by ten or more of the residents thereof, stating that the person in charge of a steam plant located in, under, or near, any school building, church, or other public building situated in said city or town, and furnishing or supplying heat for such building, is incompetent for the discharge of such duties, or by reason of negligence, intemperance, or any other cause, ought not longer to remain in charge of such steam plant, it shall be the duty of said municipal officers to immediately suspend temporarily the authority of such person to act in said capacity; and until the investigation herein provided can, be made, shall cause a person qualified as provided by this act to be placed in charge of said steam plant; and said municipal officers shall as soon thereafter as practicable, cause an investigation of such complaint to be made, and shall thereupon inquire into the habits and qualifications of the person so complained of, and if such person is, for any reason, found to be incompetent or unsuitable to longer remain in charge of said steam plant, said municipal officers shall immediately cause the certificate granted under the provisions of this act, to be revoked, and notice of such revocation shall be filed with the clerk of such city or town, and thereupon said municipal officers shall, if such plant is under their control, place a person qualified as herein provided, in charge thereof; and if such steam plant is not in charge of such municipal officers, they shall give the person or corporation having the control of such steam plant, notice of their findings, and if such person or corporation having control of such steam plant, shall, after the receipt of such findings, neglect or refuse to cause said steam plant to be placed in charge of some person qualified under the provisions of this act, such person or corporation shall be subject to the penalties herein provided. P. L. 1907 c. 82, § 4.

Every person violating any of the provisions of this act shall be subject to indictment, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or imprisonment for a term not exceeding ninety days, or both, as the court in which such conviction is obtained, shall determine. P. L. 1907 c. 82, § 5.

This act shall take effect the first day of September in the year nineteen hundred and seven. P. L. 1907 c. 82, § 6.

The governor, with the advice and consent of the council, shall appoint a state historian, who shall be a member of the Maine

Historical Society and whose duty it shall be to compile historical data of the State of Maine and encourage the teaching of the same in the public schools. It shall also be his duty to encourage the compiling and publishing of town histories, combined with local geography. It shall further be his duty to examine, and when he decides that the material is suitable, approve histories of towns compiled as provided in section two of this act. P. L. 1907 c. 88, § 1.

Whenever any town shall present to the state historian material which he considers suitable for publication as a history of the town presenting the same, then he may approve of the publication of a history with the local geography which will be suitable for the use in the grammar and high school grades of the public schools. P. L. 1907 c. 88, § 2.

Whenever material for a town history with local geography has been approved by the state historian, and the same has been published by the town, and provision has been made for its regular use in the public schools of said town; then the state treasurer shall pay the town so publishing a sum not exceeding one hundred and fifty dollars, *provided* that the state shall not pay to any town, to exceed one-half the amount paid by said town for printing and binding said histories. P. L. 1907 c. 88, § 3.

The superintending school committee, and the superintendent of schools, shall elect some citizen of the town to serve with them; and these persons shall constitute a board to compile a history and the local geography of the town in which they reside. Two or more towns may unite in compiling and publishing a history and the local geography of the towns forming the union. It shall be the duty of the superintendent of schools to forward two copies of said history to the Maine state library and notify the superintendent of public schools of the title of said history. P. L. 1907 c. 88, § 4.

All the actual cash expenses of the said state historian incurred while in the discharge of his official duties shall be paid on the approval and order of the governor and council, and shall not exceed five hundred dollars per annum. P. L. 1907 c. 88, § 5.

The state historian is authorized to expend, under the direction of the governor and council, any portion of the amount appropriated by this act, in the publication of historical matter and data relating to the history of Maine. P. L. 1907 c. 88, § 6.

The marking of historical sites, as authorized by the legislature, shall be under the direction of state historian. P. L. 1907 c. 88, § 7.

The salary of the state superintendent of schools is hereby established at twenty-five hundred per annum. He shall receive in addition his actual cash expenses incurred in the performance of his official duties which sum shall be paid out of the specific appropriation for that purpose. He shall employ a clerk, who may serve as his deputy, at a salary not to exceed fifteen hundred dollars annually, with necessary expenses when on official business within the state, and other clerical assistance at a cost not to exceed one thousand dollars annually. He shall perform his official duties at the office provided for him at the seat of government and not elsewhere, not meaning however, to prohibit him from making such necessary journeys and performing such duties as are necessary or incidental to the immediate object of such journey. P. L. 1907 c. 171, § 1.

All acts and parts of acts inconsistent with this act are hereby repealed. P. L. 1907 c. 171, § 2.

It shall be the duty of superintendents of schools to report to the municipal officers of cities, towns and plantations all schools within their jurisdiction without flags, and it shall be the duty of said municipal officers to furnish flags to all such schools, to be paid for by said municipalities. These flags are to be used in all schools for the education of the youth of our state, to teach them the cost, the object and principles of our government, the great sacrifices of our forefathers, the important part taken by the Union army in eighteen hundred sixty-one to eighteen hundred sixty-five, and to teach them to love, honor and respect the flag of our country that cost so much and is so dear to every true American citizen. P. L. 1907 c. 182.

The flag to be known as the official flag of the State of Maine shall be of blue, same color as the blue field in the flag of the United States, and of the following dimensions and designs: to wit, the length, or height, of the staff, to be nine feet, including brass spear-head and ferule; the fly of said flag to be five feet six inches, and to be four feet four inches on the staff; in the center of the flag there shall be embroidered in silk the same on both sides of the flag the coat of arms of the State of Maine, in proportionate size; the edges to be trimmed with knotted fringe of yellow silk, two and one-half inches wide, a cord, with tassels, to be attached to the staff at the spear-head, to be eight feet six

inches long and composed of white and blue silk strands. P. L. 1909 c. 19, § 1.

When a teacher becomes aware or suspects that any of the pupils attending his school are in a condition which renders them a source of offense or danger to the other pupils in school on account of filthiness, or because they are the bearers of vermin or parasites, or have an infection or contagious disease of the skin, mouth or eyes, he shall notify the superintendent of schools, and when the superintendent of schools knows or learns that any of the pupils attending any school within his jurisdiction, are affected with any of the conditions, infections, or diseases herein mentioned, he shall notify the parents to cleanse the clothing and the bodies of the children and to furnish them with the required home or medical treatment, for the relief of their trouble, and the superintendent of schools may, when he deems it necessary, exclude such children from the schools temporarily or until they may be cured, cleansed and disinfected. P. L. 1909 c. 31, § 1.

Parents thus notified of the condition of their children shall forthwith have them and their clothing cleansed and shall promptly do what is necessary, or furnish them such medical treatment as may be required, to rid the children of vermin, parasites, or contagion; and any parent who fails to do what is required so that the children may return to school with as little loss of time as is possible, shall be guilty of a misdemeanor and shall be liable to a fine not to exceed five dollars for the first offense, and not to exceed ten dollars for a second or subsequent offense. P. L. 1909 c. 31, § 2.

Another normal school to be known as Washington State Normal School is hereby created and established upon such plans as the board of trustees for normal schools may direct. P. L. 1909 c. 44, § 1.

Said normal school shall be located at Machias in the county of Washington, provided and upon condition that the inhabitants of said town of Machias, shall, within six months after the date of the approval of this act, to donate and cause to be conveyed to the state for the purpose and use of such schools a lot of land not less than five acres in extent and whatever buildings stand thereon may be selected and approved by the said board of trustees for normal schools. P. L. 1909 c. 44, § 2.

Said inhabitants of said town of Machias at a legal meeting of said inhabitants called and held within six months, are hereby

authorized and empowered by a majority vote of the legal voters voting at said meeting to authorize and direct the selectmen of said town of Machias to purchase the lot and buildings so selected and approved by said board of trustees for normal schools, to donate said lot of land and buildings to said state for the use and purpose aforesaid, and to instruct and direct the said selectmen to make, execute and deliver for and in behalf of said inhabitants a proper deed conveying said lot of land and buildings to the state for the use and purposes aforesaid. Said deed shall be delivered to the board of trustees of normal schools who are hereby authorized and empowered to accept and receive the same for and in behalf of said state, and when so delivered it shall be conclusive evidence of the legality of the meeting of said inhabitants to be held as aforesaid and of the proceedings at such meeting; and the title of said lot of land and buildings thereon, shall be forever vested in said state for the use and purposes aforesaid, and when such conveyance and delivery of such deed are made, said trustees are authorized, instructed and directed to procure teachers and put in operation such school. The cost of maintenance of such school shall be deducted and paid from the public school fund. When so established, said school shall be under the direction of said board of trustees, be conducted for the purposes, and upon the principle of the other state normal schools, and be subject to all the laws of the state relating to the same. Ib.

For the purposes of this act the sum of twenty-five thousand dollars is hereby appropriated; such sum to be available only when said lot and building are donated to the state as provided in section two of this act. P. L. 1909 c. 44, § 3.

So much of said sum of twenty-five thousand dollars as may be necessary shall be used by said trustees for repairing buildings on said lot of land the balance to be used in erecting any other necessary building or buildings on said lot. P. L. 1909 c. 44, § 4.

Any youth who resides with a parent or guardian in any unorganized township in which schools are regularly maintained may attend any secondary school in the state to which he may gain entrance by permission of those having charge thereof, provided said school shall be of standard grade approved by the state superintendent of public schools. In such case the tuition of such youth not to exceed thirty dollars annually shall be paid by the state under such provisions and regulations as may be

made by the state superintendent and approved by the governor and council. P. L. 1909, c. 62.

No child under fourteen years of age shall be employed or allowed to work in or in connection with any manufacturing or mechanical establishment. It shall be unlawful for any person, firm or corporation to employ for wages or hire any child under fourteen years of age in any manufacturing, mechanical, mercantile or other business establishment, or in any telephone or telegraph office; or in the delivery and transmission of telephone or telegraph messages during the hours that the public schools of the town or city in which he resides are in session. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employ any child in violation of the provisions of this section, and every parent or guardian who allows any child to be so employed shall be punished by a fine not less than one dollar nor exceeding fifty dollars for each offence. R. S. c. 40, § 52.

No child over fourteen years of age and under sixteen years of age shall be employed or allowed to work in any manufacturing or mechanical establishment until he, or some one in his behalf, shall have produced and presented to the owner, superintendent, overseer or agent of such establishment, a certified copy of the town clerk's record of the birth of such child, or a certified copy of his baptismal record showing the date of his birth; or his passport showing the date of his birth; or an age and schooling certificate duly issued to him as hereinafter provided. No such child between his fourteenth and fifteenth birthdays shall be employed or allowed to work in any manufacturing, mechanical, mercantile or other business establishment, or in any telephone or telegraph office; or in the delivery and transmission of telephone or telegraph messages during the hours in which the public schools of the city or town in which he resides are in session, until he shall have produced and presented to the owner, superintendent, overseer or agent of such establishment an age and schooling certificate duly issued to him as hereinafter provided. No such child between his fifteenth and sixteenth birthdays shall be employed or allowed to work in any manufacturing or mechanical establishment during the hours in which the public schools of the city or town in which he resides are in session, until he shall have produced and presented to the owner, superintendent, overseer or agent of such establishment an age and schooling certificate duly issued to him as hereinafter provided. The

employer shall keep on file such birth record, baptismal record, passport or age and schooling certificate in duplicate containing the name of such child, the name of his parents, guardian or custodian, and such data as may be required by the inspector of factories, workshops, mines and quarries. Blank employment certificates, in form approved by the attorney general, shall be furnished by the inspector of factories, workshops, mines and quarries. One of such certificates shall be delivered to such child and the other be immediately forwarded to the office of said inspector of factories, workshops, mines and quarries, to be kept on file by him. When such child leaves such employment, the employer shall return to such child the copy of the town record, baptismal record, passport or age and schooling certificate furnished by him as aforesaid, and shall immediately notify said inspector that such child has left his employ. The inspector of factories, workshops, mines and quarries, or any of his assistants, may demand of any employer or corporation the names of all children under sixteen years of age in his employ in the several cities and towns of the state, and may require that the birth record, baptismal record, passport or age and schooling certificate of such children shall be produced for his inspection, and the failure to produce the same shall be prima facie evidence that the employment of such child is illegal. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employment any child in violation of the provisions of this section, and every parent or guardian who allows any child to be so employed shall be punished by a fine of not less than one nor more than fifty dollars for each offense. R. S. c. 40, § 53.

Age and schooling certificates shall be issued by the superintendent of schools of the city or town in which the child resides, or some person designated and authorized in writing by the school committee, but no person shall issue such certificate to any minor then in or about to enter his employment, or the employment of a firm or corporation of which he is a member, stockholder, officer or employee. The person who issues the certificate in accordance with the provisions of this section is hereby empowered to administer the oath provided for therein, but no fee shall be charged therefor. R. S. c. 40, § 54.

An age and schooling certificate shall not be issued until the child applying therefor, or some person in his behalf, shall furnish satisfactory evidence of the age of the child, which evidence shall be a certified copy of the town clerk's record of

the birth of said child, or a certified copy of his baptismal record, showing the date of his birth, or a passport showing the date of his birth, or other document satisfactory to the superintendent of schools or the person authorized to issue such age and schooling certificates; nor until such child has demonstrated his ability to read at sight and write simple sentences in the English language, and perform simple arithmetical problems involving the fundamental processes of addition, subtraction, multiplication and division, such educational test to be prepared and furnished by the superintendent of schools or the school committee of each city and town in the state; or has furnished a certificate to that effect signed by any teacher in any of the public schools of the city or town in which such child resides, or by the principal of any approved private school, or a certificate signed by the principal of any evening school in said city or town, to the effect that said child is a regular attendant of said evening school. R. S. c. 40, § 55.

The form of the age and schooling certificate provided for in section fifty-three of this act shall be prepared and furnished to the superintendent of schools or the school committee of the cities and towns by the attorney general and shall be substantially as follows:

Form of Age and Schooling Certificate.

This certifies that I am the — [father, mother, guardian or custodian] of — [name of child], and that he [or she] was born at — [name of city or town], in the state [or county] of — on the — day of — in the year — and that at his [or her] last birthday he [or she] was — years old.

City or town and date.

——, *Signature of Parents.*

——, *Guardian or Custodian.*

Then personally appeared before me the above named — [name of person signing], and having produced for my inspection the — record [passport] of said child, made oath that the foregoing certificate by him [or her] signed is true to the best of his [or her] knowledge and belief.

Having no sufficient reason to doubt that he [or she] is of the age therein certified, I hereby approve the foregoing certificate of — [name of child]; whose signature, written in my presence, appears below; whose height is — feet and — inches; complexion is — [fair or dark]; hair is — color. I hereby certify that he [or she] has satisfactorily demonstrated his [or her] ability to read at sight and to write legible simple sentences in the English language, and to employ the fundamental principles of arithmetic, according to the test supplied by the local superintendent of public schools; that he [or she] has presented us a certificate to that effect signed by the

principal a teacher of some public school in said town, or that he [or she] has presented a certificate signed by the principal of an evening school in said town to the effect that he [or she], said child is a regular attendant in said evening school.

This certificate belongs to — [name of child], and is to be surrendered to him [or her] whenever he [or she] leaves the service of the employer holding the same, but if not claimed by said minor within thirty days from the time when he [or she] leaves such employment, it shall be returned to the superintendent of schools, or go to the person by whom it is issued.

Signature of child.

Signature of person authorized to issue and approve, with official character or authority.

City or town and date.

R. S. c. 40, § 55.

Whoever, being authorized to sign the foregoing age and schooling certificate, or whoever signing any certified copy of a town clerk's record of births, or certified copy of a child's baptismal record, shall knowingly certify to any false statement therein, and any parent or guardian who presents, or who permits or allows any child under his control to present, to any employer, owner, superintendent, overseer or agent as required under section fifty-three, any certified copy of birth or baptismal record, or passport, or age and schooling certificate containing any false statements as to the date of birth or age of such child, knowing them to be false, shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars for each offense. R. S. c. 40, § 56.

Sections fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one and sixty-two of said chapter forty of the revised statutes are hereby renumbered respectively as sections fifty-eight, fifty-nine, sixty, sixty-one, sixty-two and sixty-three, so that said section fifty-seven shall hereafter be numbered section fifty-eight; said section fifty-eight shall hereafter be numbered section fifty-nine; said section fifty-nine shall hereafter be numbered section sixty; section sixty shall hereafter be numbered section sixty-one; section sixty-one shall hereafter be numbered section sixty-two; and section sixty-two shall hereafter be numbered section sixty-three; and said chapter forty is further amended by inserting as section fifty-seven the following:

Nothing in the preceding sections shall apply to any manufacturing establishment or business, the materials and products of which are perishable and require immediate labor thereon, to prevent decay thereof or damage thereto. *Provided, however,*

the employment of children therein shall be under the supervision of said inspector who shall on complaint investigate the sanitary conditions, hours of labor and other conditions detrimental to children, and if in his judgment he finds detrimental conditions to exist, he may in conjunction with the municipal officers of the town or city in which the complaint is made, prohibit the employment of children therein until such conditions are removed. P. L. 1909 c. 257, § 7.

Form of Application Made to the Municipal Officers of the Town for the Calling of a Meeting to Form a Free High School Precinct.

To the selectmen of the town of ——— :

You are hereby requested by the undersigned, legal voters of the town of —, resident in the section of said town hereinafter described, to call a meeting of the voters resident within the following described limits, to wit: [*here definitely describe the limits of the proposed precinct*] ; to be held at — [*here name the place of meeting*] on the — day of —, 19—, at — o'clock in the —, then and there to act upon the following articles :

1. To choose a moderator to preside at said meeting.
2. To choose a secretary for said meeting.
3. To see if said voters will establish said described section as a free high school precinct.
4. To choose an agent and clerk for said precinct.
5. To provide and appropriate such sums as may be deemed necessary for the support of a free high school within said precinct for the ensuing year.
6. To determine where said school shall be located or kept.
7. To act upon any other business which may legally come before said meeting.

Dated at said —, the — day of —, 19—.

Form of Notice for a Meeting on the Foregoing Application.

To ———, one of the inhabitants of the following described section of the town of ———, viz: [*Here recite the limits given in the foregoing application*].

GREETING.

Written application having been made to the undersigned, municipal officers of said town, by [*here insert names of those signing applications*], legal voters of said section, to call a meeting of the legal voters thereof at the time and place and for the purposes hereinafter named, you, the said —, are hereby required in the name of the State of Maine, to notify and warn the inhabitants of said section of the town of — qualified by law to vote in town affairs, to meet at the [*here designate the place of meeting*] in

said section [*here insert the time and purposes of the meeting as set forth in the application therefor*].

Dated at —, the — day of —, 19—.

_____, }
 _____, } *Selectmen of —.*
 _____, }

Form of Return (or Certificate of Notice) on the Foregoing Warrant.

Pursuant to the within warrant, to me directed, I have notified and warned the inhabitants of the within described section, in the town of —, qualified as therein expressed, to assemble at the time and place and for the purposes therein expressed, by posting up an attested copy of said warrant at — in said section, and at —, being public and conspicuous places in said section, on the — day of —, being seven days before said meeting.

Dated at —, the — day of —, 19—.

Form of Certificate of Superintending School Committee of Dismissal of a Teacher.

The undersigned, superintending school committee of the town of —, met at the schoolhouse in school No. — [*if schools are designated otherwise than by number, use such designation*] in said town, on the — day of —, 19—, due notice of which time and place of meeting and the purposes thereof having been given to each member thereof and to the teacher in said district, and after careful and deliberate investigation, we do hereby certify that we deem the services of —, now employed as a teacher in said district, [*if schools are designated otherwise than by number, use such designation*] unprofitable to the school therein, and we accordingly dismiss said teacher for the reasons following, viz.: [*Here insert the reasons of dismissal*].

Dated at said —, the — day of —, A. D. 19—.

_____, }
 _____, } *Superintending School Committee of —.*
 _____, }

Form of Certificate of Expulsion of a Scholar.

The undersigned, superintending school committee of the town of —, met at the schoolhouse in school No. — [*if schools are designated otherwise than by number, use such designation*] in said town, on the — day of —, 19—, due notice of which time and place of meeting and the purposes thereof having been given to each member of said committee, and after proper investigation of the behavior of —, a scholar in the school therein kept, we have adjudged that the said — is an obstinately disobedient and disorderly scholar, and that we deem it necessary for the peace and usefulness of the school that he be removed therefrom, and we accordingly expel the said — from said school.

Dated at said —, the — day of —, A. D. 19—.

_____, }
 _____, } *Superintending School Committee of —.*
 _____, }

CHAPTER LII.

PARISHES AND INCORPORATION OF INDEPENDENT
LOCAL CHURCHES.

Any persons of lawful age, desirous of becoming an incorporated parish or religious society, may apply to a justice of the peace, who shall issue his warrant to one of them, directing him to notify the other applicants to meet at some proper place expressed in such warrant; and he shall give notice of such meeting seven days at least before holding the same, by posting a notification thereof on the outer door of the meeting-house or place of public worship of such society, if any, otherwise at such place as the justice appoints. R. S. c. 16, § 1.

Form of Application to a Justice.

To A. B., Esquire, one of the justices of the peace in the county of ——— :

The subscribers, desirous of becoming an incorporated parish [*or a religious society, as the case may be*] under the name of the ——— society of the town of ———, request you to issue a warrant to one of said applicants hereby applying to you, directing him to call a meeting of said applicants, to be held at ———, in the town of ———, on the ——— day of ———, at ——— o'clock in the ——— noon, for the following objects, to wit : [*Here state the purposes of the intended meeting*].

Dated at ———, this ——— day of ———, A. D. 19—.

E. G., and seven others.

Form of Warrant to Call a Meeting.

STATE OF MAINE.

———, ss.

To E. G., of ———, in said county,

GREETING.

Whereas E. G. and ——— other persons, associated to form an incorporated parish [*or religious society*] in the town of ———, under the name of ———, having applied to me ———, one of the justices of the peace in said county, requesting me to issue a warrant, directed to one of said applicants, directing him to call a meeting of said persons, according to law, to act upon the following objects, to wit : [*Here state the purpose of the meeting*]. You are hereby directed to notify a meeting of said persons according to law, to be

held at —, in said town, on — the — day of —, at o'clock in the — noon, for the purposes aforesaid.

Given under my hand, at said —, this — day of —, 19—.

A. B., *Justice of the Peace.*

Form of Notification.

Pursuant to the foregoing warrant to me directed, I hereby notify said persons to meet at the time and place, and for the purposes aforesaid.

Dated at —, this — day of —, 19—.

E. G.

Form of Return of Notification.

This certifies, that I posted up the aforesaid notification on the outer door of the meeting-house of said society [*or state the place appointed by the justice*], on the — day of —, and on the same day I posted a like notification at —, in said town.

E. G.

Such persons so assembled may choose a clerk and other needful parish officers, and shall thereupon be a corporation, bear the name which they assume, and have all the powers of parishes and religious societies. R. S. c. 16, § 2.

Every parish may take by gift or purchase any real or personal estate, until the clear annual income thereof amounts to three thousand dollars; convey the same, and establish by-laws not repugnant to law. R. S. c. 16, § 3.

The annual or other meetings of such parish may be called by its assessors, or clerk, to be held at the time when and place in the town where, they are usually held; they shall be notified as prescribed in section one or in the manner agreed on by its vote; and at such meeting, they may choose a clerk, who shall be sworn, two or more assessors, a collector, treasurer, standing committee and all other needful officers. The assessors shall manage the prudential concerns of the parish, when no other persons are appointed for that purpose, and shall be sworn. R. S. c. 16, § 4.

The moderator of any meeting shall preserve order, manage the business, and administer the oath to the clerk and assessors. R. S. c. 16, § 5.

When five members of any parish in writing request the assessors to call a meeting, or to insert any particular article in the warrant therefor, they shall do so. R. S. c. 16, § 6.

If they unreasonably refuse, any justice of the peace on like application may issue his warrant to one of the applicants, who shall notify such meeting as prescribed in section one or as agreed on by parish vote. R. S. c. 16, § 7.

When there has been no meeting of such parish or society for three years, a meeting may be called as provided in section forty-three of chapter sixteen of the revised statutes. R. S. c. 16, § 8.

Every parish, at a legal meeting, may raise money for the support of the public ministry of religion, for building, repairing, or removing houses of public worship and for other necessary parish charges; and it may be assessed and collected like state taxes. R. S. c. 16, § 9.

When a house of public worship belongs to a parish, or it and the fee of the land on which it stands, is vested in trustees for the use of a parish, such parish may assess any money raised as aforesaid, wholly or partly, on the pews or seats, whether owned by members of such parish or religious society or not; and the owners may be present and vote in raising such money. R. S. c. 16, § 10.

When taxes on pews and seats remain unpaid for six months after their assessment, the treasurer shall sell them at auction, first posting notice thereof at the principal outer door of such house of worship, three weeks before the time of sale, stating the numbers, if any, of the pews or seats and the amount of tax on each; and shall execute and deliver a deed thereof to the purchaser, and pay to the owner the overplus, after deducting the amount of tax and incidental charges. R. S. c. 16, § 11.

Whenever a parish or church raises its current expenses by assessment on its pews, any pew owner therein who shall not occupy his pew, either by himself or family, or rent the same, may give a written notice to the clerk of the parish or church, or to the parish committee or assessors, of his intention not to occupy said pew for one year following the next annual meeting of said parish or church, in which case said pew owner shall not be liable for any tax assessed on said pew during said year, neither shall he act and vote at said annual meeting unless he retains a pew for the occupancy of himself and family, and the parish or church may let said pew during said year and appropriate the rent to the current expenses of the parish or church, and said parish or church shall not sell said pew for taxes assessed during that year. R. S. c. 16, § 12.

A parish in the actual occupancy of a church, meeting-house, or other building used for religious purposes, may insure it against loss by fire. And in case of such loss, the company insuring shall not deny the occupancy of the parish, its legal existence, or its right to maintain an action on the policy. The

money so recovered shall be held by the parish in trust for repairing or restoring the building, and shall be so applied. R. S. c. 16, § 13.

A person of either sex, of lawful age, may become a member of a parish or religious society by vote thereof at a legal meeting. R. S. c. 16, § 14.

Any such person, residing in a local parish holding funds derived from this state or Massachusetts, shall be deemed a member of it, until he dissolves the connection; such person having resided in such parish one year, after he has arrived at majority, without either giving written notice to its clerk of his consent to be a member thereof, or paying a tax, or subscription according to the mode that said parish has adopted to raise money, shall be deemed to have thereby dissolved his connection therewith; and said connection shall remain dissolved, and said person shall not be taxable until he renews the connection by giving written notice to its clerk of his consent to be a member of said parish; any person residing in a local parish may become a member of such parish not deriving funds from the state, by giving written notice to its clerk of his intention to do so within one year after he is of age or removes thereto. R. S. c. 16, § 15.

No such person shall be a member of a parish or religious society without his consent; and any person may dissolve his connection therewith by leaving with its clerk a certificate of his intention to do so; and all his liability for future expenses shall thereby cease; but he may be taxed for money previously raised, except in case of removal from a local parish. R. S. c. 16, § 16.

No such person shall vote in meetings of any territorial parish who is not the owner or occupant of a pew in its house of worship, or a contributor to its support. R. S. c. 16, § 17.

No territorial parish is hereby dissolved; and when one or more parishes are set off from a town, or incorporated therein, as aforesaid, the remainder is the first parish. R. S. c. 16, § 18.

The church wardens of the Episcopal churches, the stewards or trustees of the Methodist Episcopal church, and the deacons of all Protestant churches, are so far corporations as to take, in succession, all grants and gifts of real and personal estate made to their churches, or to them and their successors; and if the ministers, elders or vestrymen are joined with them in such grants or gifts, the two classes of officers shall be corporations for that purpose. For the purpose of organizing any such corporation, one or more members of said corporation may call a meeting thereof by a

notice posted upon the outer door of the meeting-house or place of public worship of their parish or society at least seven days before the time of holding such meeting; or, if there is no such meeting-house or place of public worship, by a notice posted in two public and concicuous places in the town wherein said parish or society is located. At such meeting the corporation may organize, adopt a corporate name, and elect such officers as its by-laws shall prescribe. Said corporations shall have the powers granted to parishes by section three of this chapter, and may make such contracts in relation to such estate, its improvement or disposal, as they may be authorized under the rules of their church, or instructed by the church or society for which they hold such estate in trust, to make, which contracts may be enforced by or against them, as in other cases; *provided, however*, that no disposal of such estate shall be made, inconsistent with the terms of the grant by which it is held. R. S. c. 16, § 19.

The ministers of a parish or religious society, and the deacons, elders, trustees, stewards and other presiding officers of a religious society or church having by its usages no settled minister, may take in succession any estate granted to the minister and his successors, or for the use of the ministry, or poor of the church; and may prosecute and defend all suits respecting it; but they shall not so take, while the clear annual income of prior grants is three thousand dollars. R. S. c. 16, § 20.

No conveyance of such estate by a minister shall be valid longer than he is in the ministry; or by such deacons or other officers, longer than they are in office, if made by them without consent of the church, or by church wardens without the consent of the vestry. R. S. c. 16, § 21.

The records of a parish shall be open to the inspection of its members and to clerks of other parishes; and each clerk shall furnish attested copies thereof, on request, for a reasonable compensation. R. S. c. 16, § 22.

When a parish or religious society lawfully raises money by taxation, it may appoint its treasurer a collector of taxes, who shall have the same powers as a town treasurer who is collector; and it may allow a similar discount on taxes paid within the time fixed by it at a legal meeting, and the treasurer shall give like public notice thereof; and all other taxes shall be collected by him as town taxes are. When such treasurer and collector is qualified, the assessors shall deposit with him a list of the taxes with their warrant for their collection. R. S. c. 16, § 23.

The overseers of each monthly meeting of Quakers may take and hold, in succession, all grants of real, personal, or mixed estate made to them, for the use of their monthly meetings, the preparative meetings constituting them, or the poor thereof; also all grants of real estate situated within the limits of their monthly meetings, and gifts of personal estate made by persons living within said limits, for the use of any of the quarterly meetings of said Quakers, to said overseers for their use, or to the poor thereof; may convey and manage such estate according to the terms and conditions on which it was given; and may sue in their own names for any right that has vested in any of the said grantees or donees; *provided*, that the annual income thereof to one meeting for such uses does not exceed five thousand dollars. These powers may be enlarged, restrained, or repealed by the legislature. R. S. c. 16, § 24.

Any independent local church now existing, or that may hereafter be organized in this state, may be incorporated according to the provisions of this and the seven following sections. R. S. c. 16, § 25.

When three or more members of such church, who are voters according to section twenty-seven of this act, shall apply in writing to any justice of the peace in the county for the purpose of incorporating said church, said justice shall issue his warrant addressed to one of said applicants, stating the time, place and purposes of the meeting and directing him to notify the members of said church, by posting a certified copy of said warrant in a conspicuous place near the main entrance to the usual place of meeting of such church and in one other public and conspicuous place in the same town, for seven days, at least prior to said meeting. R. S. c. 16, § 26.

The resident members of such church twenty-one years of age and upward, shall be voters at such meeting and in all meetings of the corporation. Such voters, assembled at the time and place notified, shall elect a moderator to preside over said meeting. They shall then by ballot, proceed to vote upon the question whether the church will become incorporated hereunder. If two-thirds of the ballots cast shall be in favor of the church becoming incorporated, it shall thereupon become a body corporate with all the powers, rights and duties incident to corporations, with the right to take by gift, purchase, devise or bequest such personal and real property as may be useful for carrying on its local work, and may dispose of the same at pleasure, have perpetual succession, a corporate seal, and change the same at pleasure. R. S. c. 16, § 27.

They shall, by ballot, elect a clerk, treasurer, a business committee of not less than three nor more than seven members who are voters, and such other officers as they may deem necessary. R. S. c. 16, § 28.

Such church by its by-laws may prescribe the duties of the several officers and the manner of executing the same. When no provision is made by any vote or by-law of the church for calling meetings, they shall be called by the business committee by posting notices of the time, place and purposes of said meeting, in the same manner and for the same time as is prescribed in section thirty-six. And meetings shall also, in the same manner, be called by said committee, upon the written request of at least six members of the church qualified to vote. R. S. c. 16, § 29.

Such church may by its by-laws extend to all persons not members of the church, who are twenty-one years of age and upward and who regularly contribute toward the expenses of the church, the right to attend and participate in the annual and special meetings of the church, when action is to be taken relative to the use and appropriation of funds toward which they contributed or toward which they have pledged contributions, and meetings called for the purpose of obtaining or dismissing a pastor. R. S. c. 16, § 30.

The deacons of such church or any other person or persons holding real or personal estate in trust for the use of such church, may convey such property to such incorporated church, and said church shall hold the same subject to the uses and trusts under which it was held by such deacons and other person or persons. R. S. c. 16, § 31.

Any parish or religious society, connected with the church which becomes incorporated under the provisions hereof, may at a meeting duly warned and called for such purpose by a two-thirds vote, authorize one or more persons in its name and behalf to convey to such church any real or personal estate which it may hold for the use of such church, and such church shall thereafter hold such property to the same uses and trusts as when held by such parish or society. R. S. c. 16, § 32.

Where any property in the state, dedicated and ordained for pious uses, has no proper or legal custodian, so that it is becoming wasted and the utility thereof is lost, the court may order the proper application and disposal of same. R. S. c. 16, § 33; also P. L. 1905 c. 162.

CHAPTER LIII.

MEETING-HOUSES.

When it is deemed expedient by any organized parish to become the owner of the pews in any meeting-house used by it as a place of regular worship, a meeting of the owners and occupants thereof may be called as provided in section six, (see parishes) and a majority of such pew owners and occupants may vote to convey the pews by them owned or occupied, to such parish. R. S. c. 16, § 34.

Any owner or occupant of a pew in such meeting-house, who expresses his dissent from such vote, in writing, to the parish clerk within one month from such meeting, shall have his pew appraised as provided in section thirty-eight, and the appraised value shall be tendered to him, and he shall then deliver a deed of such pew to the parish. If such dissent is not expressed, said pew is forever forfeited to the parish. R. S. c. 16, § 35.

Any persons, for the purpose of erecting a meeting-house, or the majority in interest of the owners of a meeting-house, not a parish, may incorporate themselves as parishes may; and choose all officers and do all other acts that a parish may lawfully do. R. S. c. 16, § 36.

A majority of the pew owners or proprietors of a meeting-house, present at a legal meeting called for that purpose, may repair, remodel, or sell and convey their house or the land used with it, or remove or rebuild it. Any meeting relating there to may be called as provided in section forty; or by publishing the warrant in a newspaper printed in the county, at least fourteen days before the meeting. R. S. c. 16, § 37.

Before such alteration or sale is made, an appraisal of the relative value of the pews shall be made by three discreet persons, under oath, to be elected by ballot at a legal meeting of said owners or proprietors. If a sale of said house and land is made, it may be private or public, as such meeting determines, and the proceeds shall be applied to pay the expenses of said

sale and the debts and just claims against the property; and the balance shall be paid to the pew owners or proprietors, in proportion to their interests by the appraisal. If the meeting-house is altered or rebuilt, the appraisers, after the work is completed, shall assign pews to the former pew holders, to conform as nearly as practicable to those previously held by them; and the other pews may be sold to defray the expenses of the repairs and alterations, or be otherwise disposed of as the proprietors or pew owners determine. They may choose officers, raise and assess taxes on the pews, collect them for making such repairs and alterations, do all things that a parish may do, and appoint some suitable agent or agents to make such sale and conveyance, or repairs and alterations, and a treasurer or trustees to receive and distribute the proceeds of sale in manner aforesaid. R. S. c. 16, § 38.

When it is decided to repair, remodel or rebuild a meeting-house, any owner or proprietor dissenting from the action of the majority and declining to take an interest in the house as altered, may demand and receive of such majority the appraised value of his interest, after deducting his proportion of debts against the property, to be recovered in an action for money had and received; which shall not be commenced until thirty days after such demand, nor after the lapse of a year after notice is posted for three successive weeks on the meeting-house door and some other conspicuous place in its precinct, stating the persons to whom the money is to be paid, the amount payable to each, and the time limited for payment. If said sums are not demanded within said time, they are forfeited to the majority for parish uses. But this section does not apply to any case where the repairs decided upon are only such as are necessary to keep such meeting-house in a tenantable condition. R. S. c. 16, § 39.

The owners of a meeting-house or building for public worship, and the pew owners, may be incorporated, when any three or more of them apply therefor to a justice of the peace, who shall issue his warrant to one of them, stating the time, place, and purpose of the meeting, and directing him to notify said owners by posting a certified copy of it for fourteen days on the principal outer door of such building and in one or more other public places in the same town. R. S. c. 16, § 40.

When so assembled, they may choose a moderator and clerk, who shall perform the usual duties of such officers; and there-

upon said owners shall be a corporation, and be known by such name as they adopt, and they may agree on the mode of calling future meetings. R. S. c. 16, § 41.

Such corporation, by a major vote of its members, may use and control the meeting-house or building for public worship partly or wholly owned by them, as they please; but nothing in this and the two preceding sections shall affect the rights of owners of houses of worship, built by different religious denominations. R. S. c. 16, § 42.

When there has been no meeting of the incorporated pew owners, or proprietors or owners of a meeting-house, or building for public worship, for three years, a meeting may be called on application of three or more members thereof to a justice of the peace, who shall issue his warrant to one of them, stating the time, place and purposes of the meeting, directing him to notify such meeting by posting a certified copy of said warrant, three weeks before the time of meeting, on the principal outer door of such building, and in one or more public places in the same town, and publishing it in a newspaper published in the county, if any, otherwise in an adjoining county, or in the state paper. R. S. c. 16, § 43.

When a house of public worship is owned by persons of different denominations, and when an organized society, or its members, own five pews therein, one or more of the minority owning not less than five pews may apply to a justice of the peace, to obtain a division of the time of occupying the house; and he shall call a meeting of the owners by posting a notice in a public place in or about the house, thirty days at least before the meeting, stating the time, place and object thereof. R. S. c. 16, § 44.

At such meeting, the owners, who are not applicants, or if they refuse or neglect, the justice who called the meeting, may designate another justice, and the two may appoint a third disinterested person, not an inhabitant of the town in which the house is located, or belonging to the denomination of either party interested; and the three shall be a board, before which the owners may exhibit the amount they own in the house; the minority, owning at least five pews shall have their part allotted to them, as nearly as may be, in proportion to the amount that they own in the house; and the board shall designate which weeks in each year, the minority, if they please, may occupy the

house; if they do not, the majority may occupy it. R. S. c. 16, § 45.

The board shall appraise the value of the minority's proportion of the house, make a record of their proceedings, and within ten days cause it to be transcribed into the records of such town. R. S. c. 16, § 46.

All their reasonable expenses shall be paid by the persons who requested the division; but the above provisions shall not affect any agreement now in force as to the mode of occupying such house. R. S. c. 16, § 47.

The minority may occupy the house for their allotted time, unless the majority purchase their interest, by paying the minority the sum, at which it was appraised by the board; but if the minority decline so to sell, they shall not avail themselves of the four preceding sections. R. S. c. 16, § 48.

CHAPTER LIV.

MINISTERIAL AND SCHOOL LANDS, AND FUNDS.

Where lands have been granted or reserved for the use of the ministry, or first-settled minister, or for the use of schools, in any town, and the fee in these lands has not vested in some particular parish therein, or in some individual, it shall vest in the inhabitants of such town and not in any particular parish therein, for such uses. R. S. c. 16, § 49.

The municipal officers, town clerk and treasurer of each town where no other trustees are lawfully appointed for that purpose, shall be a corporation and trustees of such ministerial and school funds, with the usual powers granted to similar corporations. R. S. c. 16, § 50.

They shall annually elect a president, clerk and treasurer; the treasurer shall give bond with sureties sufficient in the opinion of the trustees, for the faithful discharge of his duty; and the clerk shall be sworn. R. S. c. 16, § 51.

They may sell and convey all such ministerial and school lands belonging to and lying in their town; and the treasurer's deed

thereof, executed by order of the trustees, shall pass the estate. R. S. c. 16, § 52.

As soon as may be, they shall place the proceeds of sale at interest secured by mortgage of real estate of twice the value of the principal, or by bond or note with sufficient sureties, or invest them in bank stock or public securities. R. S. c. 16, § 53.

They may, by gift, grant or otherwise, take and hold for the use of the ministry in their towns, real and personal estate, the annual income of which does not exceed one thousand dollars; and for the use of schools may take and hold estate, the annual income of which does not exceed the sum which their town is bound to raise for the same use. R. S. c. 16, § 54.

The income of the fund, arising from the sale of lands under section fifty-two, and from the rents and profits of real and personal estate held under section fifty-four, shall be annually applied to the support of public schools in the town, and expended like other school moneys. R. S. c. 16, § 55.

The trustees of any ministerial or school fund in this state, incorporated by the legislature of Massachusetts, may by consent of the town for whose use the fund was established, transfer it to the municipal officers, clerk and treasurer thereof, who are hereby made trustees of the same; and the income shall be annually applied and expended as provided in the preceding section. R. S. c. 16, § 56.

At each annual meeting of their town, the trustees shall exhibit an account of their proceedings, and a statement of the funds, receipts, and expenditures, and of the application thereof to said uses. R. S. c. 16, § 57.

When such lands are vested in a parish, the assessors, clerk and treasurer, where no other trustees are appointed for that purpose, shall be a corporation and trustees of such ministerial fund with like powers and under like liabilities, as the municipal officers, town clerk, and treasurer; pay the annual income of such lands and of the proceeds of their sale according to the terms of the grants and reservations by which they were so vested; and at each annual meeting for choice of parish officers, exhibit an account of their proceedings, and a statement of funds, receipts and expenditures. R. S. c. 16, § 58.

The first meeting, in any year, of the trustees constituted by sections fifty and fifty-eight, may be called by seven days' personal notice of the time and place thereof, given by one of them to all the others. R. S. c. 16, § 59.

CHAPTER LV.

PROPRIETORS OF LANDS, WHARVES, AND OTHER REAL ESTATE IN COMMON.

When any five, or a majority, of the proprietors of lands or wharves, held in common, desire a meeting of the proprietors for the purpose of forming a corporation, or for any other purpose, they may make written application signed by them or their agents, to any justice of the peace residing in the county in which the lands or wharves are situated; said justice shall thereupon issue his warrant calling a meeting at the time and place, and for the purposes distinctly stated in the application, directed to one of the proprietors, requiring him to give notice thereof; R. S. c. 58, § 1; 12 Me. 313, 400; 18 Me. 215; 26 Me. 549.

If the lands lie in one or more incorporated towns, a notice in writing shall be posted in some public place in each, and published in the state paper, and in one of the newspapers printed in the county where any part of them lies, fourteen days before the meeting; but if not, in the state paper, and in one other newspaper, if any, in the county where any part of them lies, four weeks successively next before the meeting; or the meeting may be warned by posting written notifications, in some public place in each town where any proprietor resides, fourteen days before the time appointed therefor. R. S. c. 58, § 2.

At such meeting, such proprietors as assemble in person or by attorney may organize into a corporation if not already so organized, choose a moderator, clerk, treasurer, assessors, collector of taxes, committees and other needful officers; and may by vote decide upon the manner of calling and notifying future meetings. R. S. c. 58, § 3; 18 Me. 215; 26 Me. 549.

The clerk, treasurer, assessors and collector, shall be sworn by the moderator or a justice of the peace, and the clerk shall record the votes passed at all meetings. R. S. c. 58, § 4; 26 Me. 553; 53 Me. 233.

No business shall be acted upon at any meeting, unless distinctly expressed in the warrant therefor; the proprietors' votes

shall be counted according to the interest of each in the common lands, if known, and in that way the moderator shall make certain all doubtful votes; and they may pass by-laws as to the management, improvement, division and disposal of their lands or wharves, subject to the approval of the county commissioners of the county where the lands lie, and may annex penalties to the breach of them, not exceeding three dollars for one offense, to be disposed of as they direct. R. S. c. 58, § 5.

The proprietors may prosecute and defend suits by their agent, and the certificate of the proprietors' clerk is evidence of such agency. R. S. c. 58, § 6; 37 Me. 44.

At any legal meeting, they may raise money for bringing forward, completing the settlement of, managing or improving said lands, or for their common good, and assess the same according to their interests in the lands; and the treasurer, collector or committee shall publish such assessment in the same manner as a meeting of the proprietors is notified. R. S. c. 58, § 7.

If any proprietor neglects to pay his assessment to the treasurer, collector or committee, for six months, if he resides in the state, otherwise for twelve months, then the committee may, from time to time, sell at auction so much of his right in the common lands, as is sufficient to pay his tax and the reasonable charges of sale, after notice thereof, posted as aforesaid, and published in two of the newspapers before named five weeks successively next before the time of sale; and may give deeds thereof in fee to the purchaser. R. S. c. 58, § 8; 4 Me. 248; 5 Me. 348; 7 Me. 408.

The proprietor of the right so sold may redeem it within a year, by paying to the committee the sum for which it was sold, with twelve dollars for each hundred produced by such sale, and in that proportion for a greater or less sum. R. S. c. 58, § 9.

The treasurer may sue for and collect all debts due to the proprietors, and shall render his account of all moneys received and paid; and he shall hold his office during their pleasure. R. S. c. 58, § 10.

A majority of proprietors present at any legal meeting, may order, manage, improve, divide or dispose of their lands as they choose; and may vote in person, or by attorney appointed in writing. R. S. c. 58, § 11; 48 Me. 526.

After a final division of their common property, they shall cause their records to be deposited in the office of the clerk of

the town in which some part of such lands lies; and he may record votes and certify copies of such records, as the proprietors' clerk might have done; and the last clerk chosen shall continue in office until the records are so deposited. R. S. c. 58, § 12; 53 Me. 233.

Such a final division shall not dissolve the corporation until ten years thereafter; but the last proprietors in common and their heirs shall continue in their corporate capacity, for the collection and payment of all debts due to or owing by the corporation; and may call and hold meetings, and vote assessments to pay their debts and all other charges necessary for closing their business. R. S. c. 58, § 13.

The owners of an unincorporated township or tract may call meetings to raise money, for making and repairing highways lawfully laid out, and to choose officers to assess and collect it. R. S. c. 58, § 14.

CHAPTER LVI.

SETTLEMENT OF PAUPERS.

Settlements, subjecting towns to pay for the support of persons on account of their poverty or distress, are acquired as follows:

First. A married woman has the settlement of her husband, if he has any in the state; if he has not, her own settlement is not affected by her marriage. When, in a suit between towns involving the settlement of a pauper, it appears that a marriage was procured to change it by the agency or collusion of the officers of either town, or of any person having charge of such pauper under authority of either town, the settlement is not affected by such marriage. And no derivative settlement is acquired or changed by a marriage so procured, but the children of such marriage and their descendants have the settlement which they would have had if no such marriage had taken place. And the same rule applies in all controversies touching the settlement of paupers between the town by whose officers a marriage is thus procured and any other town, whether the person whose marriage is

thus procured is a pauper at the time of the marriage or becomes so afterwards.

Second. Legitimate children have the settlement of their father, if he has any in the state; if he has not, they have the settlement of their mother within it; but they do not have the settlement of either, acquired after they are of age and have capacity to acquire one.

Third. Children, legitimate or illegitimate, do not acquire a settlement by birth in the town where they are born. Illegitimate children have the settlement of their mother, at the time of their birth, but when the parents of such children born after March twenty-four, eighteen hundred and sixty-four, intermarry, they are deemed legitimate and have the settlement of the father.

Fourth. Upon division of a town, a person having a settlement therein and being absent at the time, has his settlement in that town which includes his last dwelling-place in the town divided. When part of a town is set off and annexed to another, the settlement of a person absent at the time of such annexation is not affected thereby. When a new town, composed in part of one or more existing towns, is incorporated, persons settled in such existing town or towns, or who have begun to acquire a settlement therein, and whose homes were in such new town at the time of its incorporation, have the same rights incipient and absolute respecting settlement, as they would have had in the town where their homes formerly were.

Fifth. A minor who serves as an apprentice in a town for four years, and within one year thereafter sets up such trade therein, being then of age, has a settlement therein.

Sixth. A person of age, having his home in a town for five successive years without receiving supplies as a pauper directly or indirectly, has a settlement therein.

Seventh. A person having his home in a town, March twenty-one, eighteen hundred and twenty-one, without having received supplies as a pauper within one year before that date, acquired a settlement therein.

Eighth. A person having his home in an unincorporated place for five years without receiving supplies as a pauper, and having continued his home there until the time of its incorporation, acquires a settlement therein. Those having homes in such places for less than five years, before incorporation, and continu-

ing to have them there afterwards, until five years are completed, acquire settlements therein. R. S. c. 27, § 1.

To constitute pauper supplies, they must be applied for in case of adult persons of sound mind, by such persons themselves, or by some person by them duly authorized; or such supplies must be received by such persons, or by some person authorized by them, with a full knowledge that they are such supplies; and all care, whether medical or otherwise, furnished to said persons is subject to the same rule. R. S. c. 27, § 2.

Settlements acquired under existing laws remain until new ones are acquired. Former settlements are defeated by the acquisition of new ones. Whenever a person having a pauper settlement in a town has lived, or shall live, for five years in any unincorporated place or places in the state, he and those who derive their settlement from him lose their settlement in such town, and whenever a person having a pauper settlement in any town in this state shall after April twenty-nine, eighteen hundred and ninety-three, live for five consecutive years beyond the limits of the state without receiving pauper supplies from any source within the state, he and those who derive their settlement from him lose their settlement in such town. R. S. c. 27, § 3.

Whenever a person having a pauper settlement in a town loses such settlement by virtue of the provisions of section three, relief shall be furnished, and towns furnishing such relief shall be reimbursed by the state as provided in section thirty of this chapter, in case of paupers having no legal settlement in the state. R. S. c. 27, § 4.

No person, acquires a pauper settlement in a town by reason of his residing in said town as tender of a draw bridge, or as toll keeper of a bridge owned by another town, and living in a tollhouse owned by such other town. R. S. c. 27, § 5.

Inmates of the National Home for Disabled Volunteer Soldiers at Togus, in the county of Kennebec, and persons subject to the rules and regulations thereof, or receiving rations therefrom, have their settlement in the respective towns in which they had a legal settlement when their connection with said National Home commenced, so long as such connection continues therewith. R. S. c. 27, § 6.

If a town furnishes relief to any such person, who becomes a pauper after his connection with said National Home has ceased, having no legal settlement in the state, or to his family, the

state shall reimburse such town for the relief furnished, to such an amount as the governor and council adjudge to have been necessarily expended therefor. R. S. c. 27, § 7.

No child acquires a pauper settlement in the city of Bath, by reason of being an inmate of the Bath Military and Naval Orphan Asylum. R. S. c. 27, § 8.

The revised statutes shall not be construed to make any town liable for relief furnished to an alien or his family since said statutes went into effect, but relief furnished any such person shall be within the provisions of section thirty-three of chapter twenty-seven. P. L. 1905, c. 142.

No soldier or sailor who served by enlistment in the army or navy of the United States, in the war of eighteen hundred and sixty-one, or in the war with Spain, and who has received an honorable discharge from all enlistments in said service, whether in his own proper name or an assumed name, and who has or may become dependent upon any town, shall be considered a pauper, or be subject to disfranchisement for that cause; but the time during which said soldier or sailor is so dependent, shall not be included in the period of residence necessary to change his settlement; and overseers of the poor shall not have authority to remove to, or support in, the poorhouse, any such dependent soldier or sailor or his family; the word "family" here used shall be held to include the soldier or sailor, his wife, his unmarried minor children living with him and dependent upon him for support, and such other unmarried children of his dependent upon him for support, who by reason of mental incapacity or physical disability are unable to provide for themselves; but the town of his settlement shall support them at his own home in the town of his settlement or residence, or in such suitable place other than the poorhouse, as the overseers of the town of his settlement may deem right and proper. In case of a violation of this act the overseers of the poor shall be subject to a fine of twenty-five dollars. And for every day they allow them to remain in such poorhouse, after reasonable notice, they shall be subject to a further fine of five dollars per day, to be recovered by complaint or indictment. This section shall not be so construed as to deprive overseers of the poor of any right to remove and support such dependent soldier or sailor and his family in the town of his settlement, as herein provided. R. S. c. 27, § 9.

Persons who have begun to acquire settlements under existing

laws, are not affected by a repeal of them, and a re-enactment of their provisions in substance. R. S. c. 27, § 10.

"A person is to be considered as a pauper while he receives supplies, as such, from the town where he is a resident or found, whether for a year, or a portion of a year; whether in an alms-house or at his own dwelling; and whether furnished directly by the overseers of the poor, or indirectly by the person to whom he has been disposed of and consigned by such overseers for support, in consideration of his services for a year, or any less period. We are of this opinion, because in each of the situations" described in this case "the pauper is dependent upon the town, and under the care and protection, if not the personal control, of the overseers. The very fact of his being under the care of a third person by the disposal of the overseers, is proof of his being a statute pauper; for unless such be the fact, the overseers would have had no authority to make such disposition. We do not consider that it is material whether the pauper makes compensation by his labor to the person to whom he has been consigned, or to the overseers of the poor when they directly support him; for surely paupers do not change their character, even if by their labor they defray all the expenses of the alms-house where they are supported. Again, a man is to be considered a pauper so long as he receives supplies, as such, from the town where he resides, but no longer. Some limit must be fixed, for the same must have been intended; and as resident in a particular town for three months next preceding an election, authorizes a citizen of the United States to be an elector of state officers in that town, we are of opinion that such a person cannot constitutionally be construed as an excepted pauper, unless within that term, he shall have been directly or indirectly furnished with supplies, as such, from or under the sanction of the overseers of the poor of such town. If such have not been the fact, then he cannot be disqualified as a voter for such state officers; because, not falling within the intent and spirit of the exception." 7 Me. 499.

Marriage within the degrees of consanguinity, or where the wife has a husband or the husband a wife living, knowing such husband or wife to be alive, shall be void; and no settlement can be gained thereby. 4 Me. 293.

The wife gains no settlement by residing with her husband unless he gains a settlement. 1 Me. 196.

The settlement of a wife follows that of her husband until a divorce is decreed, though they live separate and though the husband is married to and living with another woman. 13 Me. 225.

If the husband does not reside in a town long enough to gain a settlement, and dies, his widow cannot acquire a settlement by residing there during the space within which, if the husband had lived, he would have gained a settlement. 15 Me. 434.

If the father have a settlement in this state, and dies, his legitimate minor children retain that settlement until they gain one for themselves, even if their mother acquires a new settlement; but if the father have no settlement in this state, the settlement of the minor children will follow that of the mother. 7 Me. 90.

The illegitimate non compos child of a non compos mother is considered as emancipated. 5 Me. 123.

A minor emancipated may gain a settlement. 3 Me. 220.

If an alien married and then left the state without an intention of returning, but afterwards tried to induce his child to live with him out of the state, the child was not emancipated so as to gain a settlement of his own right while a minor. 4 Me. 292.

An alien gains no settlement by dwelling in the town at the time of its incorporation. 1 Me. 196.

Whoever moves into a town, intending to dwell there an indefinite time, establishes his home therein. 13 Me. 225.

Domicile not affected by intention to remove, not carried into effect. 5 Me. 143; 11 Me. 190; 13 Me. 225.

Leaving town intending to return, does not change. 8 Me. 203.

The word "settlement," in reference to paupers, has become technical; when it is said that a person has his settlement in a particular town, the meaning is, that he has, in case of need, a right to support from the inhabitants of that town. 19 Me. 300.

There is a marked distinction between the place of residence and the place of legal settlement. The latter cannot be changed without acquiring a new one. The former may be abandoned without evidence that another residence has been secured. 19 Me. 375.

Children living separate from the father on account of his poverty, the parental and filial relations still subsisting, are

under the parent's care; and supplies furnished them are, indirectly, supplies furnished him. 19 Me. 441.

Insanity occurring after a residence has been established will not prevent the acquisition of a settlement, if the residence be continued five years without the receiving of pauper supplies. 33 Me. 427.

When a town in which an insane person was resident, has incurred expense in maintaining him at an insane hospital, such town, in order to recover for such expenses against the town of the pauper's settlement, must notify the defendant town in the mode prescribed in the general pauper law. Under that law, the notice must be signed in the name of the overseers of the poor, or of some one of them in their behalf. A notice signed in the name of some other person in their behalf is not sufficient. 33 Me. 453.

Where the only evidence of the residence of a pauper showed that his home was in a particular family, it is not erroneous in the judge to instruct the jury that, in order to justify them in finding a residence, it must be proved that he was a member of that family. No one can become such a member, so as thereby to gain a legal residence, unless voluntarily and by consent of the family. 34 Me. 310; 78 Me. 377.

Upon the division of any town, and the incorporation of a portion of its territory into another town, the settlement of persons residing upon such territory at that time is in the town into which it is incorporated. But the settlement of persons residing on territory set off from one town and not incorporated into another, is not changed by such dismemberment. 37 Me. 39.

A minor child of parents who are paupers, bound to service by the selectmen, by written indentures, until twenty-one years of age, is not thereby emancipated. Such child follows the settlement of his father within this state, until he acquires one of his own. 40 Me. 106.

An unmarried woman had her settlement in the westerly part of a town. She married one who had no settlement in the state, and they afterwards reside in the easterly part of the same town. While residing there, the latter portion was incorporated into a new town. The court held that her settlement was in the new town. 41 Me. 462.

A poorhouse is not regarded as having the characteristics of a statute home. 42 Me. 541.

The fact of abandonment of a home depends upon the intention of a pauper when he departs; and though his expectations in regard to business fail, so that he returns sooner or later, it is immaterial. 43 Me. 406.

To acquire and maintain a residence or home, it is not necessary that a person be at all times personally present in it or have a particular house to which he may as matter of right resort. *Ib.*

A child does not gain a new settlement, by being bound out, in the town where the person lives to whom he is bound. 48 Me. 565.

A person non compos, not residing with his father, and not supported by him, does not follow a new settlement acquired by the father, after the child is of age. 51 Me. 540; 85 Me. 134.

An unemancipated non compos from infancy, will follow the settlement of the father, as well after as before he arrives at age. 55 Me. 55; 45 Me. 537; 78 Me. 136.

The marriage of a minor daughter with her father's consent is one mode of emancipation. 56 Me. 22.

Such consent of the father may be presumed from circumstances, such as her living with her father, etc. *Ib.*

The insanity of a person does not prevent his continuous residence in a town for five years, from establishing his settlement therein. 48 Me. 332; 55 Me. 55.

If a person leaves the town where he has a home, for a specific purpose, intending to return when the purpose is accomplished, his residence is not changed thereby. 49 Me. 367.

While a person is in transit, the old domicile remains. 50 Me. 475; 52 Me. 165; 55 Me. 117.

A person is entitled to relief, though he has property that is not available. 49 Me. 385.

Towns called upon to supply paupers are entitled to the avails of the industry of the person supplied. 49 Me. 550.

If when supplies are furnished, the overseers distinctly agree that the supplies shall not be regarded as pauper supplies, and they are thus received as a gift or loan, the party receiving them will not be legally affected thereby, nor will the supplying town acquire rights against other towns. 53 Me. 29.

The obligation of towns to support paupers is entirely statutory. 55 Me. 117.

If settlement of pauper is shown to have been at one time in a town, the burden of proof is on that town to show that the pauper has a legal settlement elsewhere. Ib.

It is questionable whether an agreement made by the officers of two towns, by way of settlement of a pauper suit, that the pauper should thereafter have his settlement in one of the towns, is binding on the towns, as a contract for the future support of the pauper. 47 Me. 127.

Not only the expenses for support, but also those for burial, are recoverable of the town where the pauper has his settlement. 48 Me. 416.

If, after due notice, the town receiving it pays for all supplies thus far furnished, a new notice is necessary to charge the same town for further supplies. 46 Me. 558.

Where the supplies are furnished occasionally and not continuously, only one notice is requisite. 53 Me. 38.

For every new action a new notice must be given. 53 Me. 39.

One town cannot give "written notice" so as to charge another town for supplies furnished subsequently to such notice, unless actual supplies had been furnished prior thereto. 56 Me. 11.

Emancipation, when to be presumed, and what facts do and what do not constitute. 55 Me. 55.

When a person leaves his place of residence without any intention of returning, he has abandoned it, whether he has established another or not. 58 Me. 207.

If a naturalized citizen, after obtaining a legal settlement in this state, removes to the Province of New Brunswick, his child born there, upon coming into the state, takes the settlement of the father, though the father does not return. 58 Me. 353.

Persons born out of the limits and jurisdiction of the United States whose fathers were at the time of their birth, citizens of the United States, shall be deemed, considered and declared to be citizens of the United States. Act of Congress approved Feb. 10, 1855, c. 71.

Relief shall be given if a person is in need of immediate relief. 53 Me. 29.

The legal effect of furnishing supplies by the overseers does not in any way depend upon their intention in so doing. 61 Me. 559.

An adult person of sound mind cannot be made a pauper against his will. 69 Me. 224.

Insane person committed to hospital and supported by town is not a pauper, R. S. c. 144, § 24.

Non compos or insane person is incapable of gaining in his own right. 74 Me. 46. Follows the settlement of his father with whom he lived continuously until age of forty-eight when he was sent to insane asylum, although his father's settlement was acquired while he was in the insane asylum. Ib.

Overseers may in their discretion set to work any poor debtor who is in jail. 54 Me. 493.

Voting not conclusive as to residence. 74 Me. 154.

Question of residence is, in part, one of intention. 78 Me. 377.

Not necessarily abandoned though confined in a prison in another state, and wife has been divorced and remarried. 85 Me. 126.

Wife cannot change residence of husband against his will. Ib.

If a marriage be procured by the agency or collusion of town officers for the purpose of changing the settlement of a pauper, the settlement shall not be changed thereby. This prevents the wife taking the settlement of the husband. But their children will take his settlement instead of hers. 73 Me. 583; 88 Me. 251.

Towns where truants have their pauper settlement, at the time of their commitment to the reform school, are liable for the support of such truants. 89 Me. 525.

An emancipated minor cannot acquire a pauper settlement in a town by having his home therein for five consecutive years. 89 Me. 531.

In the sixth paragraph of section one of chapter twenty-seven of the revised statutes, it is only "a person of age" who can acquire a settlement in the mode there prescribed. A person who is not of age is excluded from the operation of this clause. While in paragraphs four, seven and eight of said section the term "person" may include minors. 89 Me. 531.

A married woman cannot acquire a pauper settlement in this state independent of her husband, in her own right. 95 Me. 53.

Under the provision of section six of chapter twenty-seven of the revised statutes no inmate of the National Home for Disabled Volunteer Soldiers at Togus or persons subject to its rules and regulations, or receiving rations therefrom, can acquire a pauper settlement in this state, so long as his connection with such home continues, whether he had or had not a pauper settlement in this state when his connection with such home commenced. 95 Me. 53.

Pauper supplies, whether received directly or indirectly, by the pauper, must be received from the town as a result of the application imposed upon it by the statute. 97 Me. 29.

Voluntary contributions of private charity do not constitute such supplies. The motive of the donors is not material. The consequences attach to the act, not to the motive. It is the receipt of supplies from the town, not the motive which may have inspired any person or persons to do away with the necessity of the pauper receiving relief from the town, which affects the gaining of a pauper settlement. 97 Me. 29.

The belief of the pauper, that the supplies were furnished by the town in response to his application, is not sufficient. It is the fact that they are so furnished and not his belief, which constitutes them pauper supplies. 97 Me. 29.

The home which a person must have in a town for five consecutive years to acquire a pauper settlement therein is equivalent to domicile which depends upon residence and intention. 498 Me. 493.

A person's intention can only be shown by his acts and words, but a mere expression of intent disconnected with any relevant circumstances would be too remote to be admissible as evidence. 98 Me. 493.

A pauper's intention is a question of fact. He may testify himself to it, but his declarations to others can only be received in evidence when accompanied by acts which they explain, so that they will be regarded as a part of acts from which his intention may be inferred. Ib.

A legitimate minor child, whose deceased father had no pauper settlement in this state instantly acquires the new settlement of the mother gained by her subsequent marriage. 89 Me. 43.

A pauper who derived a settlement in a town in this state through her husband, loses her settlement there, when her hus-

band has lived five consecutive years beyond the limits of the state, without receiving pauper supplies from any source within the state. 96 Me. 501.

It makes no difference that this residence of the husband beyond the limits of the state commenced before the enactment of the statute of eighteen hundred and ninety-three, chapter two hundred and sixty-nine. 96 Me. 501.

Upon marriage, a woman takes the pauper settlement of her husband if he has any in this state. 97 Me. 130.

If the marriage is subsequently annulled on the ground of the mental incapacity of the husband to contract marriage, the woman's pauper settlement must be regarded as not affected by the marriage. The same result follows if it is proved that the husband at the time of its solemnization was mentally incapable of contracting marriage. Such a marriage is absolutely void *ab initio*, and may be impeached collaterally, without judgment of nullity. The court has no jurisdiction to decree the annulment of a marriage upon the petition of the guardian of one of the parties. Nor can a court decree the annulment without notice to the party against whom the proceeding is brought. When want of jurisdiction in such case appears upon the face of the record, the decree is void and may be attacked collaterally. 97 Me. 131.

A minor child may become emancipated from its parents, but such child will not take the subsequently acquired pauper settlement of its parent, but takes by derivation that of the parent at the time of the emancipation. 97 Me. 473.

Voting, and taxation acquiesced in and affirmed by the payment of the tax, are acts of much stronger probative force when relied upon to prevent the gaining of a pauper settlement, than when offered to establish one. 95 Me. 111.

A pauper had his original derivative settlement in the defendant town which claimed that he had acquired a new settlement by having his home in another town for a period of five consecutive years at two different times. There was evidence tending to show that during the first period relied upon he left that town and went into another and there voted, was taxed and paid taxes; that during the second period he left the latter town and went to another town in search of employment which he obtained without any intention as to returning; that his intention in that respect was unformed and undetermined. On each occasion he took with him all that he possessed, leaving

behind him neither property, family, nor visible sign of a home. The court held that this evidence, if believed, would justify a finding by the jury; that on each occasion there was an abandonment of the pauper's former residence in the first mentioned town. *Ib.*

It is not necessary in order to retain his legal home in a town that a person should at all times have some house or building, or room, to which he has a right to go. 95 Me. 201.

In a pauper suit the burden is upon the party alleging it to prove that the pauper has gained a new settlement by having a home five years consecutively in some other town. It is possible that a man may so wander around as to lose a home within the legal significance of the word "home" under the pauper statutes. 95 Me. 202; 96 Me. 501.

Neither the act nor the omission of the assessors in the assessment or non-assessment of a tax on an individual, can be evidence for or against a town on the question of a residence of such individual. 100 Me. 67.

The assessment of a tax against a person is no admission on his part unless coupled with its payment or his recognition of it in some manner as an existing liability. At the most the assessment or non-assessment of a tax but represents the opinion of the assessors upon the question of the residence or non-residence of the person at the time, and cannot be evidence of the fact itself before another tribunal. *Ib.*

A town offered a deposition to prove that the rules governing the residential jurisdiction of a society at the time the pauper became a member thereof required a six months' residence in the town. It appeared in evidence that this regulation was not shown to have been brought to the pauper's notice or acted upon by him. The court excluded the evidence on the ground that it tended to prove as to the pauper's residence the opinion of the persons who invited him to join the society and admitted him to membership. *Ib.*

CHAPTER LVII.

**DUTY OF TOWNS RELATIVE TO POOR, AND BURIAL OF
PERSONS HONORABLY DISCHARGED FROM
ARMY, NAVY, OR MARINE CORPS.**

Towns shall relieve persons having a settlement therein, when, on account of poverty, they need relief. They may raise money therefor as for other town charges; and may at their annual meeting choose not exceeding seven legal voters therein to be overseers of the poor. R. S. c. 27, § 11.

Persons chargeable shall not be set up and bid off at auction either for support or service; but towns at their annual meetings, under a warrant for the purpose, may contract for the support of their poor for a term not exceeding five years. R. S. c. 27, § 14.

Towns may unite in the purchase of a farm, or in the erection of buildings, to be used for the support of the poor; and in procuring all necessary furniture and apparatus therefor. For these purposes, each town may choose the number of commissioners agreed upon, to constitute a joint commission to cause the agreement of the towns to be carried into effect. R. S. c. 27, § 15.

The overseers of such towns constitute a joint board of overseers of such farm and buildings. They may at a full meeting establish rules for the management thereof, appoint a superintendent, prescribe his powers and duties, and cause all the paupers of such towns to be supported there. They may receive and support there, paupers of other towns. Towns may raise money for the purposes named in this and the preceding sections. R. S. c. 27, § 16.

A person residing in a place not incorporated, may provide relief and medical aid for any other sick, wounded or injured resident, and in case of his death may cause him to be buried, and may recover the amount necessarily expended of the town where such person had a settlement, if, within sixty days there-

after, he has delivered into a post office, postage paid, a written notice signed by him informing the overseers of such town of the name of the person relieved, the nature of his sickness or injury, if known, and the amount expended. Towns paying such expenses or costs may recover the amount, with interest, of the person relieved, or of anyone liable for his support. R. S. c. 27, § 36.

Towns shall pay expenses necessarily incurred for the relief of paupers by an inhabitant not liable for their support, after notice and request to the overseers, until provision is made for them. R. S. c. 27, § 45.

When a person in their town, notoriously subject to habits of intemperance, is in need of relief, the overseers shall make a complaint to a judge of the municipal or police court or trial justice in the county, who shall issue a warrant and cause such person to be brought before him, and upon hearing and proof of such habits, he shall order him to be committed to the house of correction, to be there supported by the town where he has a settlement, and if there is no such town, at the expense of the county, until discharged by the overseers of the town in which the house of correction is situated, or by two justices of the peace. R. S. c. 27, § 46.

A town, which has incurred expense for the support of a pauper, whether he has a settlement in that town or not, may recover it of him, his executors, or administrators, in an action of assumpsit. R. S. c. 27, § 47.

Any plantation, at a legal meeting called for the purpose, may raise and expend money for support of the poor, to be applied by their assessors. R. S. c. 27, § 50.

Whoever brings into and leaves in a town where he has no settlement, any poor, indigent or insane person, having no visible means of support, or hires or procures such person to be so brought, or aids or abets in so doing, knowing such person to be poor, indigent or insane as aforesaid, with intent to charge such town in this state with the support of such person, shall be fined not exceeding three hundred dollars, or imprisoned not exceeding one year. And shall be further liable to any town or to the state for such sums of money as are expended by such town or by the state, for the support and maintenance of such person, which may be recovered in an action of the case. R. S. c. 27, § 51.

Whenever any person who served in the army, navy or marine corps of the United States during the war of eighteen hundred and sixty-one or during the war with Spain, and was honorably discharged therefrom, shall die, being at the time of his death a resident of this state and in destitute circumstances, the state shall pay the necessary expenses of his burial; or whenever the widow of any person who served in the army, navy or marine corps of the United States during the rebellion, and was honorably discharged therefrom shall die, being at the time of her death a resident of this state and being in destitute circumstances and having no kindred living within this state and of sufficient ability legally liable for her support, the state shall pay the necessary expenses of her burial; such expenses shall not exceed the sum of thirty-five dollars in any case, and the burial shall be in some cemetery not used exclusively for the burial of the pauper dead. R. S. c. 4, § 65; 92 Me. 443; 93 Me. 101.

The municipal officers of the city or town in which such deceased resided at the time of his death, shall pay the expenses of his burial, and if he die in an unincorporated place, the town charged with the support of paupers in such unincorporated place, shall pay such expenses, and in either case upon satisfactory proof by such town or city to the governor and council of the fact of such death and payment, the governor shall authorize the treasurer of state to refund said town or city the amount so paid, *provided, however*, that the person whose burial expenses are paid in accordance with the provisions of this section and the preceding section shall not be constituted a pauper thereby; said proof shall contain a certificate from the post commander of the post of the Grand Army of the Republic, located nearest the town or city which paid said burial expenses, stating that such person was an honorably discharged soldier or sailor and in destitute circumstances, or the widow of an honorably discharged soldier or sailor and in destitute circumstances, and having no kindred of sufficient ability, resident in this state legally liable for her burial expenses. R. S. c. 4, § 66; 93 Me. 101.

No person can maintain an action against a town for supplies to a pauper but the person who gave the notice to the overseers. 20 Me. 442.

The system of poor laws is founded on the provisions of our statutes; and no action can be maintained against a town for the support of any pauper, unless it be given by statute.

Under section forty-five of chapter twenty-seven of the revised statutes, where overseer offers to remove the party to whom supplies are being furnished it is a question for the jury whether the refusal of the person furnishing the supplies to permit such removal amounted to a voluntary assumption of the support of the dependent person by the party furnishing the supplies. 84 Me. 418.

The removal or offer of removal must be the act of the board, and not the individual, personal act of one member alone, unauthorized by the board. Ib.

Towns have a discretionary power to choose any number of overseers of the poor not exceeding seven; but if they deem the election of separate overseers unnecessary, the duties pertaining to those officers are to be discharged by the selectmen, of whom there must be three, five or seven. The election of only one overseer of the poor is valid. 83 Me. 219.

Overseers of the poor act as agents of the town within certain limits, and bind it by their acts within the scope of their authority. Their acts, therefore, within the limits of such authority, being in law the acts of the town, may be treated as evidence of some weight, but not conclusive against the town. 93 Me. 184.

The notice and request to overseers required by the statute to authorize an inhabitant of a town or city to recover expenses necessarily expended for the relief of a pauper in such town or city, may in the city of Lewiston, be given to the clerk or agent of the overseers; an ordinance of the city provided that its overseers may appoint "a clerk or agent" to act for them under their direction and approval. 93 Me. 71.

No statute of this state creates any liability upon the part of a municipality to reimburse an inhabitant of another town for expenses incurred by him in such other town for the relief of a pauper whose settlement is in the town sought to be liable for such expenses. Consequently, an action for such expenses so incurred, not based upon any contract express or implied with the defendant town, cannot be maintained. 97 Me. 240.

CHAPTER LVIII.

OVERSEERS OF THE POOR.

Annual town meeting shall be held in March, and the voters shall then choose, by a major vote, five or seven inhabitants of the town to be selectmen and overseers of the poor, when other overseers are not chosen. *Provided, however,* any town electing three selectmen, three overseers of the poor, and three assessors, if it shall vote so to do, may elect one member of each of the three above named boards for one year, one for two years and one for three years, and at each annual meeting thereafter one member of each of said boards shall be elected for a term of three years. Towns electing more than three selectmen, three overseers of the poor and three assessors may by vote determine how many of each of said boards shall be elected annually and the tenure of their offices. R. S. c. 4, § 12.

Towns shall relieve persons having a settlement therein, when, on account of poverty, they need relief. They may raise money therefor as for other town charges; and may at their annual meeting choose not exceeding seven legal voters therein to be overseers of the poor. R. S. c. 27, § 11.

The voters, at a legal town meeting, may raise the necessary funds for the support of the poor. R. S. c. 4, § 71.

Towns have the discretionary power to choose any number of overseers of the poor not exceeding seven; but if they deem the election of separate overseers unnecessary, the duties pertaining to those officers are to be discharged by the selectmen, of whom there must be three, five or seven.

The election of only one overseer of the poor is valid. 83 Me. 219.

Overseers shall have the care of persons chargeable to their town, and cause them to be relieved and employed at the expense of the town, and the town may direct their employment. R. S. c. 27, § 12.

Supplies furnished by order of one of a board of overseers act-

ing under a parole agreement with the rest as to the general manner of executing their office, are supplies furnished within the meaning of the statutes. 4 Me. 298; 64 Me. 416.

It is not necessary that a majority of the overseers should make a personal examination as to the necessity for supplies. One may act upon information derived from one of his fellows, and if he ratify an order previously given for supplies by his associates, it is sufficient to constitute a furnishing by the town 62 Me. 229; 64 Me. 417.

When one of the selectmen of a town orders supplies to be furnished a person entitled to relief, the assent of the other selectmen is to be presumed, because it is their duty to assent. It would be extremely inconvenient, if no supplies could be furnished paupers without the express consent of a majority of the selectmen, while no inconvenience can result from holding, that proper supplies furnished on proper occasions by order of one of the selectmen, shall bind the town in the same manner as if furnished by the express order of all the selectmen. 3 N. H. 291; 7 N. H. 315; 10 N. H. 36; 33 N. H. 577. "Our rule is, that one overseer may in a proper case furnish supplies to a distressed pauper by virtue of precedent authority, or his act, without such authority, may receive a subsequent ratification." 48 Me. 560; 64 Me. 417.

When supplies have been furnished by one overseer, and the bill for such supplies is presented to the town where the residence of the pauper is claimed to be, by another overseer who had knowledge of the furnishing of these supplies, it was properly submitted to the jury to determine whether such overseer by presenting the bill for payment ratified the same, if special ratification is to be regarded as necessary, where needed supplies are furnished in good faith to relieve existing distress. Ib.

A formal adjudication by the board of overseers of the poor after a pauper has fallen into distress and stands in need of relief is not necessary. It is sufficient if one overseer furnishes the supplies upon his own view of what is necessary and proper, provided his act is subsequently assented to or ratified by a majority of the board. 70 Me. 114.

Where all, or a majority, of the board of overseers join in a notice to the town where the pauper's settlement is, stating that he had fallen into distress and was in need of immediate relief, and that such relief had been furnished by the town, this affords

competent evidence of such ratification, and, in the absence of proof to the contrary, is sufficient evidence of the fact. Ib.

Testimony from the wife of the pauper that when the supplies were received the same were necessary and that the husband was sick and unable to labor, and nothing appearing to the contrary, is sufficient to justify the jury in finding that the supplies were actually applied for by the paupers themselves, or that they were received with a full knowledge that they were pauper supplies. Ib.

Form of Indenture for Binding Persons over Twenty-one Years of Age.

This indenture, made by and between —, overseer of the poor of the town of —, in the county of — and State of Maine, of the one part, and —, of the said town, of the other part, witnesseth: That said overseers, by the authority vested in them by law, have bound, and do hereby bind out to labor to the said — for one year from the date hereof, a person residing in said town [*or a person residing in said town, but having no settlement in the state, as the case may be*], who is able of body, but who has no apparent means of support and who lives idly, and pursues no lawful business. (R. S. c. 142, § 1). During which time said — shall faithfully serve said — in all things whereunto he may lawfully command him. And the said — covenants on his part that he will pay said overseers for the services of said — for the term aforesaid, the sum of — dollars, to be by them applied to the maintenance of said —.

In witness whereof, said parties have hereunto set their hands and seals, this — day of — A. D. 19—.

A. B. [Seal.]

C. D. [Seal.]

E. F. [Seal.]

Overseers may set to work, or by deed bind to service upon reasonable terms, for a time not exceeding one year, persons having settlements in their town or having none in the state, married or unmarried, able bodied, upwards of twenty-one years of age, having no apparent means of support and living idly; and all persons liable to be sent to the house of correction. R. S. c. 27, § 28; 93 Me. 184.

A person so bound may complain to the court, in the county where he or the overseers reside, and the court, after notice to the overseers and master, may, upon a hearing, dismiss such complaint, or discharge him from the master and overseers, and award costs to either party or against the town at discretion. R. S. c. 27, § 29.

Persons found in places not incorporated and needing relief, are under the care of the overseers of the oldest incorporated adjoining town, or the nearest incorporated town where there are none adjoining, who shall furnish relief to such persons, as if they were found in such towns: and such overseers may bind to service the children of such persons as they may those of paupers of their own town, and may bind out persons described in section twenty-eight of chapter twenty-seven of the revised statutes in manner therein provided, residing in such unincorporated place, as if in their own town, and such persons shall be entitled to a like remedy and relief. When relief is so provided, the towns so furnishing it have the same remedies against the towns of their settlement as if they resided in the town so furnishing relief. And when such paupers have no legal settlement in the state, the state shall reimburse said town for the relief furnished, to such an amount as the governor and council adjudge to have been necessarily expended therefor. And the reasonable expenses and services of said overseers relative to such paupers, shall be included in the amount to be so reimbursed by the state. R. S. c. 27, § 30.

A town is not bound to furnish relief to a pauper in distress and standing in need of relief except only, and so far, as it is a matter of statutory enactment. 60 Me. 156.

The paupers to be relieved are not under the care of the overseers of the poor of the several towns in the state, but of "the overseers of the oldest incorporated adjoining town, or the nearest incorporated town where there are none adjoining," who by the statute, "shall furnish relief to such persons found in places not incorporated and needing relief, as if they were found in such towns." The overseers to whose care the pauper and his family are intrusted, are to have charge of them and to furnish relief to them, not the overseers who have no control over them. Ib.

A person found in an unincorporated place, in need of relief, having no home or place of residence in such unincorporated place, but being there for some temporary purpose only, is not within the meaning of the foregoing section. 68 Me. 593.

When persons residing in an unincorporated place, and having no pauper settlement in the state, remove from such place to any town, and there need relief, and the same is furnished to them by such town, the state shall reimburse said town for such relief so furnished, in the same manner and under the same

restrictions as to the amount reimbursed, as provided in the preceding section. R. S. c. 58, § 31.

Whenever persons who have no legal settlement within the state, and needing immediate relief, are found in any town, or unincorporated places, and are brought into any adjoining town obliged by law to care for and furnish relief to such persons, and relief is so furnished, the state shall reimburse said town for such relief so furnished, in the same manner and under the same restrictions as provided in section thirty, chapter twenty-seven of the revised statutes, although the overseers of the poor of said town have no permit in writing from the governor and council to remove the same into their town. R. S. c. 27, § 33.

Whenever towns that are compelled to care for and furnish relief to state paupers in unincorporated places, for reasons of economy desire to remove the same into their own town, their overseers of the poor may make a written request, stating their reasons to the governor and council, who shall examine the same, and if in their judgment such state paupers would thereby be supported with less expense to the state, may permit in writing such transfer to be made. Whenever state paupers are thus transferred and maintained in a town for such purposes, they do not become paupers of such town by reason of residence therein, while so maintained. R. S. c. 27, § 32.

Plantations having a population of two hundred or more, and a valuation of at least one hundred thousand dollars, shall hereafter support the paupers therein, in the same manner that towns now do, and the expenses therefor shall not be chargeable to the state. R. S. c. 27, § 34.

Persons found in plantations having a population of more than two hundred, to be determined by the returns of the county commissioners, as provided by section one hundred and thirteen of chapter four, and a state valuation of forty thousand dollars, and needing relief, are under the care of the assessors of such plantations; and the duties and powers of such assessors relative to such persons, are the same in every respect as overseers of the poor in towns have in like cases; and such plantations shall assess and raise all moneys necessary to defray the expense incurred in the care of such persons; and plantations so furnishing relief, have the same remedies against the towns of their settlement, that towns have in like cases. But this section does not extend to, or affect the laws concerning so-called state paupers or paupers' settlements. R. S. c. 27, § 35.

The duty imposed by the foregoing section does not extend to state paupers, but only such as have the settlement in some town. The effect of this section is to impose upon the assessors of such plantation the duty of looking after that class of paupers for the support of whom they have their remedy against the towns where is to be found their legal settlement. This duty was formerly cast upon the oldest adjoining town, and this duty still continues in relation to the so-called state paupers. It is not the duty of unincorporated plantations to provide for support of state paupers, or raise money for their relief but by express statute persons found in places not incorporated and needing relief, are under the care of the assessors of the oldest incorporated adjoining town. And when such paupers have no legal settlement in the state, the state shall reimburse said town for the relief furnished. 90 Me. 515.

Overseers shall relieve persons destitute, found in their towns and having no settlement therein, and in case of death, decently bury them, or dispose of their bodies according to section three of chapter seventeen; the expenses whereof and of their removal incurred within three months before notice given to the town chargeable, may be recovered of the town liable, by the town incurring them, in an action commenced within two years after the cause of action accrued, and not otherwise; and may be recovered of their kindred in the manner before provided in this chapter. R. S. c. 27, § 37.

All public officers, agents and servants of any and every county, city, town and other municipality, and of any and every almshouse, prison, morgue, hospital or other public institution having charge or control over dead human bodies required to be buried at the public expense, are required to notify immediately the board of distribution of dead human bodies (as provided in revised statutes chapter seventeen) whenever any such body or bodies come into his or their possession, charge or control, and shall, without fee or reward, deliver such body or bodies to said board, or its duly authorized officers or agent, and permit and suffer the said board or its agents, or the physicians and surgeons from time to time designated by it or them, to comply with the provisions of chapter seventeen of the revised statutes, to take and remove any and all such bodies to be used within the state for the advancement of medical education; but no such notice need be given and no such body shall be delivered, if any person, satisfying the authorities in charge of said body that he or she is a member of the family of or next of kin to the

deceased, shall claim the body for burial, but it shall be surrendered to him or her for interment, and no notice shall be given and no body delivered to said board or its agents, if such deceased person was a traveler and not a vagabond who died suddenly, in which case the said body shall be buried. R. S. c. 17, § 3.

The town in which a pauper has his settlement, is not liable to an action by the town relieving him until the expiration of two months after notice given pursuant to the statute. 3 Me. 453.

When a man has a wife and children under his immediate care and protection, and with his family is unable to support himself and them, he is to be considered a pauper. 15 Me. 363.

Where one town furnishes supplies to a pauper having his legal settlement in another, the cause of action accrues at the time of the delivery of notice that the expenses have been thus incurred, and the statute of limitations of two years, within which the action must be begun, begins to run at that time. 16 Me. 384.

Expenses incurred for the protection of inhabitants of the town from the small-pox, and to prevent the spread of contagious diseases, cannot be recovered of the sick person, but must be borne by the town thereby to be benefited. 19 Me. 221.

An action by a town, wherein a pauper is found in need of immediate relief, may be maintained, to recover the expenses incurred against the town in which his settlement may be, as soon as the town notified has returned an answer denying that the settlement of the pauper was in their town and their liability for the expenses, although commenced within two months after notice given. 26 Me. 461.

When persons having settlements in other towns fall into distress and stand in need of immediate relief, the overseers of the poor need not inquire or consider whether such persons have or have not property for any other purpose, than to enable them to determine that fact. 27 Me. 493.

If supplies are furnished by the overseers of the poor of a town to a person alleged to be a pauper having a settlement in another town, their opinion or adjudication that the supplies furnished were necessary, although made in good faith, is not conclusive of that fact in a suit to recover the value of such supplies. 28 Me. 289.

It is within the scope of the official powers of overseers of the poor to adjust and pay claims against their town, made for supporting any of their paupers by another town. 29 Me. 313.

Notice to the defendant town must be signed in the name of the overseers of the poor, or of some one of them in their behalf. 33 Me. 453.

A town having relieved a person who has no settlement in the state is under no further obligation when that person removes to another town and there falls into distress. 38 Me. 476.

An action to recover for supplies furnished a pauper may be brought within two years after two months have expired from the time of giving notice, where no answer is returned, and where an answer is returned denying liability, within two years from the return of the answer. 40 Me. 287.

A. and his wife and children, while residing in Bangor, were furnished supplies as paupers; the husband having no settlement in the state, the wife and children having a settlement in the town of Hampden. *Held*, that the latter town was liable for such part of the supplies as were used by the wife and children, but not for such as were used by the husband. 41 Me. 484.

If a town chargeable makes payment for supplies furnished a pauper upon due notice, a new notice is necessary to charge it for further supplies furnished to the pauper. 46 Me. 558.

Where a notice is signed as selectmen and it does not appear that other persons were chosen as overseers of the poor, it will be presumed that the selectmen acted in that capacity, and the notice held sufficient. 48 Me. 353.

Overseers are to relieve persons destitute found in their towns and having no settlement therein. The relief must be reasonable and proper. The statute does not prescribe the manner in which this relief shall be administered. This must be left to the sound discretion of the overseers. 49 Me. 550.

Cities and towns furnishing supplies to the families of soldiers under the act of eighteen hundred and sixty-one, chapter sixty-three, have no action against the city or town where the soldier whose family has received supplies has his settlement. 50 Me. 518.

The forcible removal of the family of a volunteer soldier to the town of their legal settlement, by the overseers of the poor of the town, would be an unauthorized act for which they would be answerable in damages. 51 Me. 603.

One notice is sufficient where the supplies are furnished occasionally, the same as if furnished continuously. 53 Me. 38.

The cause of action for the support of an insane pauper, who is not an inhabitant of the town, originates when the expenses incurred at the insane hospital by a town are paid to the hospital, and the statute of limitations then begins to run. 62 Me. 247.

Ratification by a majority of the board of overseers makes valid the action of one of their number in furnishing supplies to one falling into distress. 64 Me. 415.

For every new action for pauper supplies furnished by a town, a new preliminary notice must be given. 67 Me. 533.

In an action for pauper supplies, the ability of kindred to contribute to a pauper's support cannot be set up in defense by the town or city where the pauper has his settlement. Actual payment for the supplies furnished is not essential to create a cause of action for them. 85 Me. 282.

The statute authorizes the recovery only of the expenses of relieving persons destitute, and of their removal or burial. Expenses incurred by a town to protect its inhabitants or the public from danger of hurt by paupers are not recoverable under the pauper statute. 102 Me. 38.

The notice to be given by one town to another under the provisions of the foregoing section of the revised statutes, is not required to be of any particular form, and when such notice is accompanied by an explanatory letter the notice and the letter should be construed together and if they together contain the essential information required by the statute they constitute a sufficient notice if properly addressed and signed. 103 Me. 496.

A recovery in such an action against a town estops it from disputing the settlement of the pauper with the town recovering, in any future action brought for the support of the same pauper. R. S. c. 27, § 38.

Overseers shall send a written notice, signed by one or more of them, stating the facts respecting a person chargeable in their town, to the overseers of the town where his settlement is alleged to be, requesting them to remove him, which they may do by a written order directed to a person named therein, who is authorized to execute it. R. S. c. 27, § 39.

When, in consequence of a notice to the overseers of the town in which a pauper has his settlement, they provide for him; if the pauper afterwards receives aid from the same town which

gave the notice, a new notice is necessary in order to charge the town of the pauper's settlement. 12 Mass. 316; 14 Mass. 186.

Where a town in which a pauper had his settlement, being duly notified pursuant to the statute, paid the expenses of his support and removed him, but before he reached the place of his settlement he returned to the town where he had been removed, where he again became chargeable. *Held*, that the town in which he had his settlement was not liable for the expenses accruing after his return, without a new notice. 1 Me. 228.

For every new action for supplies furnished by a town, a new notice must be given within two years and two months at most before the suit is commenced, even though a former action between the same parties for the support of the same pauper is still pending. 53 Me. 40.

A notice that "S. and his family," or that "S. and several of his children" are chargeable, is sufficient as to the husband and wife only under a statute which requires that the notice that persons have become chargeable as paupers, should state the names of such persons, or otherwise so describe them, as that the overseers may certainly know whom to remove. It is insufficient as to the children. 1 Me. 329.

When a man has a wife and children under his immediate care and protection, and with his family is unable to support himself and them, he is to be considered a pauper, within the meaning of the revised statutes of eighteen hundred and twenty-one, chapter one hundred and twenty-two. In such case if the notice be applicable only to the man himself, the amount expended for his support can be recovered by the town furnishing the supplies. 15 Me. 363.

A notice signed by the chairman of the selectmen *eo nomine* is sufficient, and it will be presumed that the town did not choose overseers of the poor, unless the contrary appears. 3 Me. 197.

The notice required by statute may properly be sent or delivered to such persons or any one of them as appear by the records of the town to be notified to be overseers of the poor for the current year. 4 Me. 475.

A notice under the statute is sufficient, if it be signed by one overseer of the poor in behalf of all. 15 Me. 169.

The arrival of a notice at the post office in the town to which it was directed is made by statute eighteen hundred and thirty-five, chapter one hundred and forty-nine, equivalent to a delivery

to the overseers, and the two months within which an answer is to be returned begins from the date of such arrival. 21 Me. 298.

A notice of a certain tenor held to be sufficient. 26 Me. 61.

A notice sufficient as to a wife will not be held invalid because it is coupled with a defective notice as to others. 31 Me. 125.

When no answer to a notice is returned by the defendant town, the cause of action for supplies furnished accrues at the expiration of two months from the time notice is given. 41 Me. 594. Overruled. 53 Me. 43.

The giving of a new notice is not a waiver of any rights acquired under the first notice given. 45 Me. 405.

The deposit in the post office of a notice to a town that one of its inhabitants has become chargeable as a pauper is evidence only of delivery, not of the contents of the notice. 46 Me. 460.

After payment for all supplies furnished up to the time of the notice, a new notice is necessary to charge the town for further supplies to the pauper. 46 Me. 560.

Where no payment has been made one notice is sufficient. 48 Me. 356.

Where a pauper has died, the failure in the notice to request a removal does not invalidate it, nor does the absence of a date, it being proved that the notice arrived at the post office in the town chargeable before the expiration of the three months from the time the supplies were furnished and the funeral expenses paid. 48 Me. 416.

A town cannot give a notice that will charge another town for pauper supplies furnished subsequent to such notice, unless actual pauper supplies had been furnished prior thereto. 56 Me. 11.

A written notice signed by the city clerk "for the overseers of the poor" is not a sufficient compliance with the statute, although done under the instructions of the overseers. 59 Me. 293.

A notice containing a misstatement of material facts is not a compliance with the statute. 63 Me. 582.

The failure of the overseers of the poor of the defendant town to return an answer to the notice sent to them by the overseers of the poor of the plaintiff town, estops the defendants to deny that the pauper had a settlement in the defendant town notwithstanding the pauper has not been removed to the latter town;

such a removal, or a reasonable excuse for not making it, is not essential to create the estoppel provided by chapter twenty-seven, section thirty-nine of revised statutes. 72 Me. 203.

Form of Notice.

To the overseers of the poor of the town of ———, in the county of ———,
in the State of Maine :

Gentlemen :

You are hereby notified that A. B., an inhabitant of your town, having fallen into distress, and in need of immediate relief, in the town of ———, the same has been furnished by said town on the account and at the proper charge of the town of ———, where said A. B. has his legal settlement ; you are requested to remove said A. B., or otherwise provide for him, without delay, and to defray the expense of his support in said town of ———. The sums expended for his support up to this date are ———.

Dated at ———, this ——— day of ———, A. D. 19—.

C. D., }
E. F., } *Overseers of the Poor of ———.*
G. H., }

Form of Denial of Settlement, in Answer to a Notice.

To the overseers of the poor of the town of ——— :

Gentlemen :

Your letter [*or notice*] of the ——— instant, stating that A. B. has fallen into distress, and been furnished relief by your town, at the charge of the town of ———, was duly received. Upon inquiry we are satisfied that this town is not the place of the lawful settlement of the said A. B. We cannot, therefore, cause his removal, nor contribute towards his support.

Dated ———.

Yours, with respect,

C. D., }
E. F., } *Overseers of the Poor*
G. H., } *of the Town of ———.*

Overseers receiving such notice shall within two months, if the pauper is not removed, return a written answer signed by one or more of them, stating their objections to his removal; and if they fail to do so, the overseers requesting his removal may cause him to be removed to that town, in the manner provided in section thirty-nine of chapter twenty-seven of the revised statutes; and the overseers of the town to which he is sent shall receive him and provide for his support; and their town is estopped to deny his settlement therein, in an action brought to recover for the expenses incurred for his previous support and for his removal. R. S. c. 27, § 40.

The town in which the pauper has a settlement is not liable to an action by the town relieving him until the expiration of two months after notice. 3 Me. 454.

Supplies furnished by order of one of a board of overseers, acting under a parol agreement with the rest of the board as to the manner of executing their office, are supplies furnished "by some town" within the statute (eighteen hundred and twenty-one, chapter one hundred and twenty-two, section three). 4 Me. 298.

The provisions of the statute that failure to answer the notice bars the defendant town from contesting the question of settlement does not apply to cases where the settlement can be shown to be in the town giving the notice. 5 Me. 31.

The answer to a notice will not furnish a basis of defense except as to those persons named therein. 30 Me. 213.

The suit must be commenced within two years after an answer denying liability is returned, or, if no answer is returned, within two years after the expiration of the two months from the time of giving notice, which the law allows the defendant town to return an answer. 53 Me. 43.

A town having notice that A. B. and his wife and children have become chargeable as paupers is not estopped to deny the settlement of the alleged wife and children, unless it appeared that they were the wife and children of A. B. 63 Me. 582.

The failure of a town to return an answer to the notice estops it to deny that the pauper had a settlement within it, notwithstanding the pauper has not been removed to the town; such a removal or a reasonable excuse for not making it is not essential to create the estoppel provided by the statute. 72 Me. 205.

It is immaterial to the issue how the pauper came into the town. If supplies have been furnished, the town furnishing them, after following the requirements of the law, may recover of the town in which the pauper relieved has his settlement compensation for the supplies thus furnished. 75 Me. 209.

When a written notice or answer provided for in this chapter is sent by mail, postage paid, and it arrives at the post office where the overseers to whom it is directed reside, it is sufficient. R. S. c. 27, § 41.

Where it was proved, that a notification, stating the facts in relation to a pauper, as required by the act for the settlement and relief of the poor, and properly directed to the overseers of

the town where his settlement was alleged to be, was put into the post office on a certain day, and did arrive at the post office in the town to which it was directed, and was actually received by the overseers, but the precise day did not appear; *held*, that in the absence of all other evidence, the presumption of law was, that the notice was received in due course of mail. The arrival of the notice at the post office in the town to which it is directed, is made by statute equivalent to a delivery to the overseers, and the two months within which an answer is to be returned, commenced from such arrival of the notice. 21 Me. 298.

When the date of mailing or receiving the notice is established, the absence of date in such notice is not material. 48 Me. 422.

When the removal of a pauper to the town of his alleged settlement is sought, under section thirty-nine, and the person to whom the order of the overseers is directed, requests him to go with him in obedience thereto, and he refuses to go, or resists the service of such order, the person to whom it is directed may make complaint in writing, by him signed, of the facts aforesaid, to any judge of a police or municipal court or trial justice within the county where said pauper is then domiciled. Said magistrate shall thereupon, by proper order or process, cause said pauper to be brought forthwith before him by any officer to whom the same is directed, to answer said complaint and show cause why he should not be so removed. The complaint may be amended at any time before judgment thereon, according to the facts. The complainant and the pauper shall both be heard, and if upon such hearing the magistrate finds that the town to which it is proposed to remove such pauper is liable for his maintenance and support, he shall issue his order, under his hand and seal, commanding the person to whom it is directed to take said pauper and transport him to the town aforesaid, and deliver him to the custody of the overseers of the poor thereof. The person to whom said last named order is directed shall have all the authority to execute the same according to the precept thereof, that the sheriff or his deputy has in executing warrants in criminal proceedings. In the foregoing proceedings, the fees and costs shall be the same as for like services in criminal cases, and shall be paid by the town seeking to remove such pauper. R. S. c. 27, § 42.

Where the complaint was made directly by one of the overseers, substantially that the overseers did not upon search find

the pauper; that she evaded them, and avoided arrest, *Held*: That the warrant issued upon such complaint was unauthorized by the statute and utterly void. 76 Me. 128.

A person removed, as provided in this chapter, to the place of his settlement, who voluntarily returns to the town from which he was removed, without the consent of the overseers, may be sent to the house of correction as a vagabond. R. S. c. 27, § 43.

On complaint of overseers, that a pauper chargeable to their town has no settlement in the state, any judge of a municipal or police court, or trial justice, may, by his warrant directed to a person named therein, cause such pauper to be conveyed, at the expense of such town, beyond the limits of the state to the place where he belongs; but this section does not apply to the families of volunteers enlisted in the state, who may have been mustered into the service of the United States. R. S. c. 27, § 44.

Upon the death of a pauper then chargeable, the overseers may take into their custody all his personal property, and if no administration on his estate is taken within thirty days, they may sell so much thereof, as is necessary to repay the expenses incurred. They have the same remedy to recover any property of such pauper, not delivered to them, as his administrator would have. R. S. c. 27, § 48.

For all purposes provided for in this chapter, its overseers, or any person appointed by them in writing, may prosecute and defend a town. R. S. c. 27, § 49.

Whoever keeps a house of ill fame, resorted to for prostitution or lewdness, shall be punished by imprisonment for not less than one year, and by fine not exceeding five hundred dollars; and if after conviction he is again convicted, he shall be punished by imprisonment for not less than one, nor more than three years. The municipal officers and constables of towns and cities, and assessors of plantations, are required promptly to enforce the laws against such houses, and to make complaint against any person within their respective municipalities, where there is probable cause to believe such person guilty of a violation of this section. A person, convicted of keeping such a house, before a municipal or police court or trial justice, may be sentenced to the house of correction or jail not exceeding one month. And such person shall not be allowed to keep boarders or lodgers without a license from the overseers of the poor of

the town, who shall prosecute for such offense, all whom they have good reason to suspect to be guilty. R. S. c. 125, § 9.

When an overseer of the poor, police officer, constable, parent, master or guardian, has reason to believe that a female has been inveigled or enticed to a house of ill fame as aforesaid, he may complain on oath to a competent magistrate who may issue his search warrant as in other cases, to enter such house by day or night, search for such female, and bring her and the person in whose keeping she is found, before him and may order her to be delivered to the complainant or to be discharged, as law and justice require. R. S. c. 125, § 11.

When a person in their town, notoriously subject to habits of intemperance, is in need of relief, the overseers shall make complaint to a judge of a municipal or police court, or trial justice in the county, who shall issue a warrant and cause such person to be brought before him, and upon hearing and proof of such habits, he shall order him to be committed to the house of correction, to be there supported by the town where he has a settlement, and if there is no such town, at the expense of the county, until discharged by the overseers of the poor in which the house of correction is situated, or by two justices of the peace. R. S. c. 27, § 46.

If the overseers cause a citizen to be arrested and restrained, upon an unwarranted assumption of facts, they are answerable in damages. The statute says "notoriously subject to habits of intemperance" and who "is in need of relief." Upon writ of habeas corpus the court will inquire into the facts and discharge the person if the facts are not satisfactorily established, or if there be no further occasion for his detention. 11 Me. 212.

In bastardy complaints, no woman, whose accusation and examination on oath have been taken by a justice of the peace at her request, shall make a settlement with the father, or give him any discharge to bar or affect such complaint, if objected to in writing by the overseers of the poor of the town interested in her support or the child's. R. S. c. 99, § 8.

The town has no right, except by consent of the woman, to settle with the father, or give him a discharge to bar or affect such complaint. The property of a pauper does not rest in the town or overseers of the poor upon receiving supplies. 18 Me. 151.

The time of making the objection under the provisions of the foregoing statute is not stated. The court holds that the objec-

tion is seasonably made, if made at the trial of the respondent on the complaint. 61 Me. 405.

When the overseers of the poor of a town, liable for the expenses of examination of a patient and his commitment to either hospital, are notified by mail by the superintendent, that he has recovered from his insanity, they shall cause him to be removed to their town; and if they neglect it for fifteen days, the superintendent shall cause it to be done at the expense of such town. R. S. c. 144, § 27.

Fines imposed for injuring gardens, orchards, fields or enclosures, shall be paid over to the overseers of the poor, for the poor of the town where such conviction is had. R. S. c. 128, § 16.

No license to sell the estate of any ward, not a minor or insane, shall be granted, unless the applicant produces to the court a certificate under the hands of the overseers of the poor of the town where the ward resides, if in the state, giving their consent to the sale, and their opinion as to the amount proper to be raised thereby, excluding debts contracted by gambling; and if applicable to the case, whether it is necessary to sell a greater amount in value of land to prevent injury to the residue. R. S. c. 73, § 9.

All bills for support of state paupers shall be filed with the governor and council within three months after the same are contracted, and no such bills shall be allowed unless they are so filed within thirty days after the thirty-first day of December of the year in which they are contracted. P. L. 1907 c. 113.

The revised statutes shall not be construed to make any town liable for relief furnished to an alien or his family since said statutes went into effect, but relief furnished any such person shall be within the provisions of section thirty-three of chapter twenty-seven. P. L. 1905 c. 142.

CHAPTER LIX.

DUTY OF KINDRED TO SUPPORT POOR RELATIVES.

The father, mother, grandfather, grandmother, children, and grandchildren, by consanguinity living within the state and of sufficient ability, shall support persons chargeable in proportion to their respective ability. R. S. c. 27, § 17.

Any person aggrieved by any direction of judgment of the court may allege exceptions. 23 Me. 420.

By the statute, kindred by consanguinity, living within this state, and of sufficient ability, are liable for the support of paupers. But an illegitimate child, in the eye of the law, is *filius nullius*, and has no kindred by consanguinity. Such a person, at common law, could have no heirs but of his own body. It is only by express provision of statute that the mother of such a person can inherit his estate. The reputed father is not recognized, in law, as of kindred blood; and is only liable for the support of the child by special statutes. And such statutes are not to be construed as extending the line of kindred beyond the parties expressly named. If, therefore, the pauper in this case is an illegitimate child, the defendant is not liable for his support. 45 Me. 370.

The complaint against kindred of a pauper to compel them to contribute to his support should be in the name of the city or town in which the pauper resides. 51 Me. 414.

Where judgment has been rendered in favor of the overseers of the poor of such town on their complaint, the judgment cannot be revived by scire facias in the name of the town,—although the town is beneficially interested in its enforcement,—even if this were the proper process by which to obtain a warrant of distress under the statute. Ib.

A grandfather not of sufficient ability to support his grandchild, in whole or in part, stands in the same position as other inhabitants of the town in which he resides. 53 Me. 60.

If otherwise within the provisions of section forty-five of chapter forty-seven of the revised statutes a grandfather may recover of the town for the expenses necessarily incurred in relieving his grandchild; and, if he has hired him kept, the expenses actually paid out. If of sufficient ability to contribute partial support, he can recover only that part of the support which he cannot supply. *Ib.*

One of the kindred of a pauper, assessed and apportioned a certain sum for the support of the pauper, desiring to be released from that obligation, upon the ground that he is not of sufficient ability to pay it, must file his petition under the requirements of the revised statutes, for a modification of the decree in the county where the same was originally entered. 64 Me. 202.

In an action for pauper supplies the ability of kindred to contribute for the support for a pauper cannot be set up in defense by the town or city where the pauper has his legal settlement. 85 Me. 282.

A town or any kindred, who have incurred expense for the relief of a pauper, may complain to the supreme judicial court in the county where any of them resides; and the court may cause such kindred to be summoned, and upon hearing or default, may assess and apportion a reasonable sum upon such as are found to be of sufficient ability for the support of such pauper to the time of such assessment, and may enforce payment thereof by warrant of distress. Such assessment shall not be made to pay any expense for relief afforded more than six months before the complaint was filed. R. S. c. 27, § 18.

The overseers of the poor of a town complained to the court against the grandfather of a pauper chargeable to that town, to whose support they alleged that he was of sufficient ability to contribute; and for that purpose prayed process against him. In that court he moved for a trial of the question of his ability, by the jury. The judge overruled the motion on the ground that it was a question to be determined by the court. 5 Me. 324.

The contingent statutory liability which a son is under to reimburse the town of his mother's pauper settlement for supplies furnished to her, is not of sufficient consideration for his promise to the town to pay the same. Nor is his moral obligation of sufficient consideration. Where in such case the town relied upon the promise and omitted to prosecute its statutory

claims for reimbursement within the time limited by the statute, the promisor is not estopped to deny liability. 98 Me. 531.

It has been held that the phrase "sufficient ability" refers as well to capacity or skill to earn or acquire money, as to property actually owned. Ability and refusal to support constitute one act of delinquency, and where a man has physical and mental power to acquire means he comes within the intent of the law. 70 Wis. 473.

Under a statute which provides that the father, mother and children, "of sufficient ability," of a poor person unable to maintain himself, must maintain him, the court held the words "of sufficient ability" as used in the statute, should be construed as synonymous with the words "is shown to have means." 145 N. Y. 350.

The supreme court of Maine has not construed the words "sufficient ability." Courts of other states having similar statutes have held that a person is not to be considered of "sufficient ability" to support a relative, though he has property, where the effect of compelling him to do so would be in a short time to render him a pauper. The ability is to be determined by his annual income, and not by his actual wealth. He cannot be compelled to intrench upon his capital for such purpose, whereby he might himself be reduced to pauperism. 2 Pa. Co. Ct. 664; 1 R. I. 409; 6 Honst. (Del.) 330; 30 N. H. 9; 64 Amer. Dec. 275; 4 N. H. 94.

The supreme court of Massachusetts has not followed the rule as stated in the preceding paragraph. The court says: "Each case of the kind must depend upon its own special circumstances, and to a large extent also upon the discretion of the court." It is a question of present ability, not ability to pay assessments under all the uncertain contingencies which might happen in the future. It is to be judged of with reference to the existing state of things, and to the present state of the defendant's property and debts, his income and probable earnings, and his present reasonable expenses. The court has power, on application, to revise and alter the assessment, if in the course of time it shall be found to be burdensome and oppressive. 128 Mass. 139.

A farmer whose real estate was worth from one thousand to eighteen hundred dollars, whose personal property was valued at from two hundred to five hundred dollars, and whose debts were seven hundred dollars more than the debts due to him, was not to be considered as of sufficient ability to be a proper

subject of this process. Under such an assessment his income would be insufficient for his support, and therefore he should be excused from that additional burden. 4 N. H. 158.

A farmer ought not to be called on in this manner, who cannot from his farm, with his own labor and the assistance of his family, maintain himself, his wife and children, and pay the interest of his debts. 4 N. H. 86.

Such complaint may be filed with the clerk of the court, who shall issue a summons thereon, returnable and to be served as writs of summons are; and on suggestion of either party that there are other kindred of ability not named, the complaint may be amended by inserting their names, and they may be summoned in like manner, and be proceeded against as if originally named. R. S. c. 27, § 19.

The court may assess and apportion upon such kindred a sum sufficient for the future support of such pauper, to be paid quarterly, until further order; and may direct with whom of such kindred consenting thereto, and for what time, he may dwell, having regard to his comfort and their convenience. On application of the town or person to whom payment was ordered, the clerk may issue or renew a warrant of distress returnable to the next term of court, to collect what may be due for any preceding quarter. R. S. c. 27, § 20.

The court may, from time to time, make any further order on complaint of a party interested, and after notice given, alter such assessment or apportionment. On failure to sustain a complaint, the respondents recover costs. R. S. c. 27, § 21.

A man is liable to support his wife and children. A town furnishing them relief as paupers can recover therefor from him. 14 Mass. 227; 5 Gray 28; 160 Mass. 149.

CHAPTER LX.

BASTARD CHILDREN AND THEIR MAINTENANCE.

When a woman pregnant with a child, which, if born alive, may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof, before any justice of the peace, and requests a prosecution against him, such justice

shall take her accusation and examination on oath, respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and such other circumstances as he deems useful in the discovery of the truth. R. S. c. 99, § 1.

Prosecutions under this statute are not local; but they may be instituted in the county where the mother resides, notwithstanding the child was begotten and born in another county. 6 Me. 460.

The accusation and complaint may be made after the birth of the child (16 Me. 38), and need not be separate instruments. 18 Me. 304.

The complaint need not allege that the complainant accused the putative father during her travail (8 Me. 163), or the precise time when the child was begotten; but if charged as having been done between the first and fifteenth of a specific month, it is sufficient. 39 Me. 469.

If the complainant be under twenty-one years of age, she need not act by guardian or *prochein ami*; nor can her guardian control or dismiss the proceedings. 18 Me. 372.

If the mother marry before prosecution, and one be afterwards instituted, the husband should join in the complaint. 16 Me. 38.

It is a sufficient description of place in a declaration in a bastardy complaint to allege that the child was begotten "at the shop of —, in Waldoboro in the county of Lincoln." 81 Me. 63.

Original complaint and magistrate's record may be put in evidence to show compliance with preliminary statutory requirements. 100 Me. 517.

He may issue his warrant for the apprehension of the accused, directed to the sheriff of any county in which the accused is supposed to reside, or to either of his deputies, accompanied by such accusation and examination. R. S. c. 99, § 2.

Officers may pursue and arrest respondent in another county. See R. S. c. 82, § 68.

When the accused is brought before such or any other justice, he may be required to give bond to the complainant, with sufficient sureties, in such reasonable sum as the justice orders, conditioned for his appearance at the next term of the supreme judicial or superior court for the county in which she resides, and for his abiding the order of the court thereon; and if he

does not give it, he shall be committed to jail until he does. The cost of commitment and board of the accused while so in jail shall be paid by the county in which said jail is situated. If he gives the required bond after said commitment, he shall be liberated upon the payment of cost of commitment and board. R. S. c. 99, § 3.

The security taken to compel the alleged father's appearance at the court should be a bond, and not a recognizance. The bond is not essential to give jurisdiction to the court, if the defendant appear in person or by attorney. 2 Me. 165.

A breach of the bond prescribed in section three, obliges the obligor to pay such money as the court shall order for the maintenance of the child as well as to give the new bond for the performance of such order. 3 Me. 433. And where after giving such bond the defendant was committed for failing to comply with the order of court for the maintenance of the child and to furnish other security, and subsequently discharged by taking the poor debtor's oath, the sureties were not thereby discharged. 19 Me. 409.

A judgment of affiliation does not, in a suit upon the bond, preclude the defendant from questioning its validity. 26 Me. 378.

On a warrant, issued April, 1867, ordering the arrest and return of the respondent before a trial justice "to find sureties for his appearance at the next term of the supreme judicial court to be holden — on the third Tuesday of September, 1867," the respondent was arrested July, 1868, when he gave bond in due form for his appearance at the September term, 1868, at which term he seasonably filed a motion to quash the proceedings: *Held*, (1) That the delay beyond the first term in arresting the respondent did not vitiate the complaint and warrant; (2) That the words "on the third Tuesday of September, 1867," may be rejected as surplusage, and leave sufficient to authorize the subsequent proceedings; and (3) The fact that the arrest was not made until after the birth of the child did not vitiate the warrant issued before birth. 56 Me. 414.

Bastardy complaints are civil actions to be brought in the county where the complainant resides. 85 Me. 285.

If at such next or any subsequent term, the complainant is not delivered of her child, or is unable to attend court, or shows other good reason, the cause may be continued; and the bond shall remain in force until final judgment, unless the sureties of

the accused surrender him in court at any time before final judgment, which they may do, and thereupon they shall be discharged; and he shall be committed until a new bond is given. R. S. c. 99, § 4.

A surrender at the office of the clerk of a court or to the sheriff or jailer after adjournment on the last day of the term at which judgment is rendered, is not a compliance. It must be in court while in session and before final judgment. 76 Me. 247.

On a complaint under the bastardy statute, the adjudication and order of the presiding justice, that the defendant is adjudged the father of the child, and that he stand charged with its maintenance, with the assistance of the mother, constitute the "final judgment"; the time of the announcement and entry thereof in court is the date of the judgment; and no surrender of the defendant on any day thereafter in court will discharge the sureties on his bond. 80 Me. 354.

Before proceeding to trial, the complainant must file a declaration, stating that she has been delivered of a bastard child begotten by the accused, and the time and place when and where it was begotten, with as much precision as the case admits; and that being put on the discovery of the truth during the time of her travail, she accused the respondent of being the father of the child, and that she has been constant in such accusation. R. S. c. 99, § 5.

Bastardy pertains to the civil and not to the criminal department of the law. 36 Me. 486.

If the declaration allege that the child was begotten on or about a certain specified day it is sufficient; and it is no ground for a new trial that the jury found the child was begotten at a later time than that charged. 39 Me. 469.

The plea to the merits is "not guilty." 1 Me. 304.

Accusation during travail is a condition precedent to right of recovery. 83 Me. 146.

Constancy in accusation after it is formally made is also a condition precedent to the right of recovery. Prior inconstancy affects only her credibility as a witness. 92 Me. 125.

When the complainant has made said accusation; been examined on oath as aforesaid, been put upon the discovery of the truth of such accusation at the time of her travail, and thereupon has accused the same man with being the father of the

child of which she is about to be delivered; has continued constant in such accusation, and prosecutes him as the father of such child before such court; he shall be held to answer to such complaint; and she may be a witness in the trial. R. S. c. 99, § 6.

A complainant in bastardy is a competent witness to testify to any fact within her knowledge, essential to her cause, without first showing that, "being put upon the discovery of the truth, during the time of her travail, she accused the respondent of being the father of the child"; 56 Me. 317; but such an accusation is a condition precedent to her right to prosecute the respondent. 44 Me. 342; 56 Me. 317; 83 Me. 146.

It must be made during travail and before delivery. 6 Me. 460; 35 Me. 433; 39 Me. 469. It need not be in answer to any inquiry, but if she intelligibly mentions the fact that the respondent is the father of the child it is sufficient, without stating when and where the child was begotten. 57 Me. 489; 8 Me. 163; 55 Me. 360.

The constancy mentioned in the statute has reference only to the man; and any inconstancy as to the time or place affects only her credibility. 18 Me. 304. So with a prior accusation accusing another man. 23 Me. 573; 92 Me. 125.

The statute in bastardy proceedings requires an accusation during travail of the complainant as a condition precedent to the right of recovery. The court admitted evidence of the fact by the testimony of an attendant at the time of travail. 83 Me. 146.

If, on such issue, the jury finds the respondent not guilty, he shall be discharged; but if they find him guilty, or the facts in the declaration filed are admitted by default or on demurrer, he shall be adjudged the father of such child; stand charged with its maintenance, with the assistance of the mother, as the court orders; and shall be ordered to pay the complainant her costs of suit and for the expense of her delivery, and of her nursing, medicine and medical attendance, during the period of her sickness and convalescence, and of the support of such child to the date of rendition of judgment; and shall give a bond, with sufficient sureties approved by the court, to the complainant to perform said order, and a bond, with sufficient sureties so approved, to the town liable for the maintenance of such child, and be committed until he gives them. The latter bond shall be deposited with the clerk of courts for the use of such town.

If the respondent does not comply with that part of the order relative to payment of expenses and costs of suit, execution may issue therefor as in actions of tort. R. S. c. 99, § 7.

The respondent may testify as a witness in his own behalf; 44 Me. 342; but where he has submitted to the jurisdiction of the court, and filed a general demurrer, he cannot, under his plea, avail himself of defects in the preliminary proceedings before the magistrate. 45 Me. 549.

If the papers show the allegations sufficient, if proved to entitle the complainant to a judgment of filiation against the respondent, such judgment will be ordered on demurrer. If, pending a complaint in bastardy, and before trial, the child dies, the putative father is, nevertheless, chargeable with the expenses prior to its death. 37 Me. 546.

If default is made before and judgment of paternity after filing of the declaration, it is not error. 70 Me. 414.

Execution will not issue for amount due under order of court for support. 72 Me. 254.

In a bastardy suit the burden of proof to establish the paternity of the child is on the complainant. The child cannot be exhibited to the jury, as evidence that the defendant is its father. 80 Me. 454; 81 Me. 348.

No woman, whose accusation and examination on oath have been taken by a justice of the peace at her request, shall make a settlement with the father, or give him any discharge to bar or affect such complaint, if objected to in writing by the overseers of the poor of the town interested in her support or the child's. R. S. c. 99, § 8.

Overseers of the poor are justifiable in advancing money, employing counsel, and rendering assistance in the prosecution of a bastardy process, the complainant being poor, and an inhabitant of their town. 7 Me. 399. Their objection to a settlement is seasonable if made at the trial of the respondent. 61 Me. 405.

Neither the mother, nor the town where her settlement is, without the consent of the other, has power to settle a prosecution under this statute against the alleged father, and a settlement with either is no discharge; and a note given to the treasurer of the town by the alleged father, on a settlement with the overseers, without the assent or ratification of the mother, is without consideration. 18 Me. 150.

A town prosecuting in behalf of the complainant, is liable to

the respondent, if he prevails, for his costs of court, to be recovered in an action of the case; or the court may, on his motion, enter judgment against the town for such costs, and issue execution thereon. R. S. c. 99, § 9.

When the father of such bastard child has remained for ninety days in jail, without being able to comply with the order of court, he may be liberated by taking the poor debtor's oath, as persons committed on execution; but he shall give fifteen days' notice of his intention to do so, to the mother, if living, and to the clerk of the town where the child has its legal settlement, if in the state. The mother and said town may, after such liberation, recover of him by action of debt any sum of money, which ought to have been paid pursuant to the order of court. R. S. c. 99, § 10.

A mother who has recovered judgment upon a previous adjudication, that the putative father of her illegitimate child should pay to her a sum of money, is entitled to have execution running against his body, notwithstanding he may have been discharged, on taking the poor debtor's oath from an imprisonment which has been ordered upon his refusal to give bond for the performance of the original adjudication. 32 Me. 21.

When the complainant dies before trial, her executor or administrator may prosecute her action to final judgment; and in case of judgment against the respondent, the bond for performance of the order of court, required by section seven, shall run to such executor or administrator, who, after payment of the costs of prosecution, shall appropriate to the support of the child the money recovered of the respondent. R. S. c. 99, § 11.

Proceedings in bastardy abate by the death of the respondent during the pendency of such proceedings in court before trial. 85 Me. 224.

Form of Complaint.

STATE OF MAINE.

County of ———, ss.

The voluntary accusation and examination of A. B., of ———, in the county of ———, spinster, taken on oath before ———, a justice of the peace in and for said county of ———, on the ——— day of ———, 19—, who saith that she has been delivered of a bastard child [*or is pregnant with a child, which, if born alive, may be a bastard*]; and she accuses C. H., of ———, in the county of ———, laborer, of being the father of said child; and says that he did beget her with said child on or about the ——— day of ———, 19—, at the house of J. H., etc. [*here state the place, and such other circumstances as may be*

deemed useful in the discovery of the truth];* wherefore she prays that said C. H. may be apprehended and held to answer to this accusation, and to be further dealt with relative thereto as the law directs.

A. B.

STATE OF MAINE.

County of ———, ss.

[Date.]

Then the aforesaid A. B. personally appeared and made oath that the above accusation and examination by her signed are true.

Before me,

———, *Justice of the Peace.*

Form of Warrant.

STATE OF MAINE.

County of ———, ss.

To the sheriff of the county of ———, or either of his deputies, or to any constable in any town in said county of ———,

GREETING.

[L. s.] Whereas A. B., of ———, in the county of ———, spinster, on the ——— day of ———, 19—, hath by her voluntary accusation and examination, taken in writing, upon oath, before me, ———, esquire, a justice of the peace in and for the county of ———, declared that she has been delivered of a bastard child [*or is pregnant with a child, which, if born alive, may be a bastard*], and accused C. H., of ———, in the county of ———, laborer, of being the father of said child, and of begetting her with child at the house of, etc. [*here follow the time and circumstances mentioned in the examination*]; and hath prayed that the said C. H. may be apprehended and held to answer to such accusation, and to be further dealt with relative thereto as the law directs:

Therefore, you are hereby commanded, in the name of the State of Maine, forthwith, to apprehend the said C. H., if he may be found in your precinct, and bring him before me, or some other justice in and for said county of ———, to give bond to the said A. B., with sufficient sureties, in such sum as said justice may then and there order, conditioned for said C. H.'s appearance at a supreme judicial court next to be held at ———, in and for the county of ———, on the ——— day of ———, 19—, and to abide such other orders as may be then and there made, pursuant to the statute.

Given under my hand and seal, this ——— day of ———, in the year of our Lord one thousand nine hundred and ———.

———, *Justice of the Peace.*

Form of Officer's Return.

County of ———, ss.

[Date.]

By virtue of this warrant, I have this day arrested the within-named C. H., and have him before ———, esquire, a justice of the peace in and for said county of ———.

J. C., *Deputy Sheriff.*

Fees, etc.

Form of Record of Examination.

County of ———, ss.

[Date.]

Be it remembered, that on the — day of —, 19—, A. B., of —, in said county, spinster, made her accusation in writing, on oath, before me, —, esquire, a justice of the peace in and for said county, that [*here follow the Form of Complaint to *, then*], whereupon the said C. H., being afterwards, to wit, on the — day of —, 19—, brought before me, the said justice, by virtue of a warrant by me issued on said accusation: It is therefore ordered by me, the said justice, that the said C. H. give bond to the said A. B., in the sum of — dollars, with two sufficient sureties, conditioned for his appearance at a term of the supreme judicial [*or superior*] court next to be held at —, in and for the county of — [*name of county where complainant resides*], on the — day of —, 19—, and abide the order of said court thereon, and stand committed until this order is performed.

Attest,

———, Justice of the Peace.

Form of Bond (Condition for Appearance).

Know all men by these presents, that we, C. H., of —, etc., as principal, and I. M. and R. T., both of —, as sureties, are held and firmly bound unto A. B., of —, spinster, in the sum of — dollars, to be paid to the said A. B., to the payment of which we hereby bind ourselves, our executors and administrators.

Sealed with our seals, and dated this — day of —, 19—.

The condition of this obligation is such, that whereas the said A. B., on the — day of —, 19—, made her accusation in writing, on oath, to —, esquire, a justice of the peace in and for the county of —, that she had been delivered of a bastard child [*or was pregnant with a child, which, if born alive, might be a bastard*], and accused the said C. H. of being the father of said child, and the said justice hath ordered the said C. H., who was brought before him on a warrant duly issued upon such accusation, to give bond to the said A. B. in the sum of — dollars, with two sufficient sureties, conditioned for his appearance at a supreme judicial [*or superior*] court next to be held at —, in and for said county, on the — day of —, 19—, and abide the order of the court thereon; now, therefore, if the said C. H. shall appear at said court and abide the order of said court thereon, then this bond shall be void; otherwise it shall remain in full force.

Signed, sealed and delivered
in presence of,

C. H. [L. s.]
I. M. [L. s.]
R. T. [L. s.]

If the respondent does not give such bond, the justice will commit him to jail until he does.

Form of Bond (Condition to Pay Woman for Support of Bastard).

The condition of this obligation is such, that whereas, upon the complaint of the said A. B., the said C. H. has by our — court been adjudged the father of a bastard child of which the said A. B. has lately been delivered ; and whereas the said court has ordered that the said C. H. shall pay to the said A. B. the sum of — dollars per year for the term of — years, if the said child shall so long live, towards its support [*or whatever the order may be*] ; now, therefore, if the said C. H. shall well and truly perform the said order, and pay said A. B. the said sum of — dollars every year for — years next ensuing, towards the support of said child, if it shall so long live, then, etc.

Form of Bond (Condition to Indemnify a Town Against a Bastard, in Bond Running to the Inhabitants of the Town).

The condition of this obligation is such, that if said C. H. shall indemnify the said town of — against all expenses, damages, costs, and charges to which it may be subjected for the maintenance of a certain bastard child, of which one A. B. has lately been delivered, and of which the said C. H. has been adjudged the father, then, etc.

Form of Mittimus.

STATE OF MAINE.

County of —, ss.

To the sheriff of our county of —, or either of his deputies, or any constable in the town of —, in said county, and to the keeper of the jail in the county of —,

GREETING.

[L. S.] Whereas A. B., of —, in the county of —, spinster, hath by her accusation and examination, taken in writing, upon oath, on the — day of —, 19—, before me, a justice of the peace in and for the county of —, declared that she has been delivered of a bastard child [*or is pregnant with a child, which, if born alive, might be a bastard*] and hath accused C. H., of —, in the county of —, laborer, of being the father of said child ; and a warrant hath been issued by me on said accusation against the said C. H., and the said C. H. hath appeared, and hath been required by me to give bond to the said A. B., in the sum of — dollars, with two sufficient sureties, conditioned for his appearance at a supreme judicial [*or superior*] court next to be held at —, in and for said county of —, on the — day of —, 19—, and abide the order of said court thereon, but hath neglected and refused to give such bond :

You are therefore commanded to take and convey the said C. H. to our jail in —, in said county of —, and deliver him to the keeper thereof, together with this warrant ; and you, the said keeper, are hereby required to receive the said C. H. into your custody in the said jail, and him safely keep, until he shall give such bond, or be therefrom otherwise lawfully delivered.

Given under my hand and seal, at —, in said county of —, this — day of —, in the year, etc.

—, *Justice of the Peace.*

Form of Declaration.

STATE OF MAINE.

County of —, ss.

I, —, of —, in the county of —, etc., being duly sworn, declare and state as follows :

That I am the complainant in a certain action in bastardy, now pending in the supreme judicial court, within and for said county of —, having been entered in said court at the — A. D. 19— term thereof, in which action —, of —, in the county of —, etc., is respondent; that on the — day of —, A. D. 19—, at —, in said county, I was delivered of a bastard male child, which child was begotten on my body by the said —, on or about the — day of —, A. D. 19—, at [*describe place*]; that during the time of my travail at the birth of said bastard child I was put upon the discovery of the truth, and I then and there accused the said — of being the father of the child of which I was about to be delivered; that I have been constant in said accusation and I still accuse the said — of being the father of my said bastard child, and that it was begotten as aforesaid.

—, *Complainant.*

STATE OF MAINE.

County of —, ss.

[*Date.*]

Subscribed and sworn to.

Before me,

—, *Justice of the Peace.*

CHAPTER LXI.

WORKHOUSES.

Any town may erect or provide a workhouse for the employment and support of persons of the following description; all poor and indigent persons, maintained by or receiving alms from the town; all able bodied persons not having estate or means otherwise to maintain themselves, who refuse or neglect to work; all who live a dissolute and vagrant life and exercise no ordinary calling or lawful business sufficient to gain an honest livelihood; and all such persons, as spend their time and property in public houses, to the neglect of their proper business, or by otherwise

misspending what they earn, to the impoverishment of themselves and their families, are likely to become paupers. Any workhouse may, by vote of the town, be discontinued, or applied to other uses. Until such workhouse is thus provided the alms-house or any part thereof may be used for that purpose. R. S. c. 142, § 1; 11 Me. 210; 65 Me. 121.

Such workhouse shall be in charge of the overseers of the poor of the town maintaining the same, who shall have the inspection and government thereof, with power to appoint a master and needful assistants for the more immediate care and superintendence of the persons received or employed therein. R. S. c. 142, § 2.

The overseers, as occasion requires, shall hold meetings on the business of their office; and make needful orders and regulations for such house, to be binding until the next town meeting, when they shall be submitted to the consideration of the inhabitants; and such as are approved at said meeting shall remain in force until revoked by the town. R. S. c. 142, § 3.

When any person, not having a legal settlement in any town in the state, becomes idle or indigent, he may be committed to the workhouse provided for the town in which he resides, to be employed, if able to labor, in the same manner, and to be subject to the same rules as the other persons thereto committed. R. S. c. 142, § 4.

Every person committed to such workhouse, if able to work, shall be kept diligently employed during the term of his commitment. For idleness, obstinacy, or disorderly conduct, he may be punished as provided by the lawful regulations of the house. R. S. c. 142, § 5.

Form of the Order for Commitment.

To A. B., master of the house of correction in the town of ———:

You are hereby required to receive and keep C. D. in said house of correction for — hours, unless sooner discharged by our order.

E. F., } *Overseers of said House*
G. H., } *of Correction.*

And any sheriff, deputy sheriff, constable, or other person, to whom such order is given by said overseers, shall forthwith apprehend and convey such person to said house of correction, and deliver him to the master thereof, to be taken and kept agreeably to the order; and shall receive from the town such

fee for service and travel as are allowed for service of such warrants.

When any person in a jail, house of correction or workhouse, is attacked with a disease, which the local board of health of his town, by medical advice, consider dangerous to the safety and health of other prisoners, or of the inhabitants of the town, they shall, by their order in writing, direct his removal to some place of safety, there to be securely kept and provided for until their further order; and if he recovers from such disease, he shall be returned to his place of confinement. R. S. c. 18, § 62.

CHAPTER LXII.

HOUSES OF CORRECTION.

A municipal or police court, or trial justice in his county, on complaint under oath may commit to jail or to the house of correction in the town where the person belongs or is found, for a term not exceeding ninety days, all rogues, vagabonds and idle persons going about in any town in the county, begging; persons using any subtle craft, jugglery, or unlawful games, or plays, or for the sake of gain pretending to have knowledge in physiognomy, palmistry, to tell destinies or fortunes or to discover lost or stolen goods; common pipers, fiddlers, runaways, drunkards, night walkers, railers, brawlers and pilferers; persons wanton or lascivious in speech or behavior, or neglecting their callings or employments, misspending what they earn and not providing for the support of themselves and their families; all idle and disorderly persons having no visible means of support, neglecting all lawful calling or employment; and all idle and disorderly persons who neglect all lawful calling or employment and misspend their time by frequenting disorderly houses, houses of ill fame, gaming houses or tippling shops. R. S. c. 142, § 6.

A town, at its own expense, may build and maintain a house of correction. Until such house of correction is so built, the almshouse or any part thereof may be used for that purpose. R. S. c. 142, § 7.

Such house of correction shall be in charge of the overseers of the poor of the town maintaining the same, who shall have the inspection and government of the same, and may establish from time to time, such rules and orders not repugnant to law, as they deem necessary for governing and punishing persons lawfully committed thereto. When an alms-house is used for a house of correction, the master thereof shall be master of the house of correction; but in other cases the overseers thereof shall appoint a suitable master, removable at their pleasure, and may fix his compensation. The overseers from time to time, shall examine into the prudential concerns and management of such house, and see that the master faithfully discharges his duty. R. S. c. 142, § 8.

Every person committed to such house of correction shall be supplied with suitable food and clothing, and if sick, with such medical attendance and care as the overseers order; and all expenses incurred for commitment and maintenance, exceeding the earnings of the person confined, shall be paid by the town where such prisoner has his legal settlement, or by his kindred as hereinafter provided. R. S. c. 142, § 9.

The master of such house may set to work all persons committed to his custody, so far as they are able, during the time of their confinement; and if their deportment renders it expedient, he may impose shackles or fetters to prevent resistance or escape, without unnecessarily inflicting pain or interrupting labor. R. S. c. 142, § 10.

If a prisoner is stubborn, disorderly, idle, refractory, or refuses to perform his appointed task in a proper manner, the master may abridge his supply of food until he complies with the reasonable requirements of the master and overseers. R. S. c. 142, § 11.

Notwithstanding the payment of costs and expenses, if the prisoner has actually received relief as a pauper, the overseers of the poor where the house is, or of the town to which he belongs, on complaint to the justice or court by whom he was committed, may procure an extension of the confinement, for not more than thirty days at a time, by the judge or justice; and such application may be renewed, if occasion requires it, on like complaint; and in all cases the prisoners shall be brought before the justice or court to answer to the complaint. R. S. c. 142, § 12.

Such masters shall, within ten days after commitment of any person to such house of correction, give notice thereof to the

overseers of the poor of the town where it is situated, and if the prisoner has actually received relief as a pauper, said overseers shall give the same notice thereof to the overseers of the poor of the town of his legal settlement, as is required in other cases in which paupers become chargeable in places where they have no legal settlement. R. S. c. 142, § 13.

The master shall keep an exact account of the earnings of each prisoner, and of the expenses incurred for commitment and maintenance; specifying the time of his commitment and liberation, and present it, on oath, to the overseers of the poor of the town where such house is established annually and oftener if directed, and the town may recover the amount of such expenses after deducting the earnings of the prisoner, from the town where such prisoner has his legal settlement. If such account shows the earnings of such prisoner to exceed the expenses incurred for commitment and maintenance of said prisoner, such excess may be paid by the overseers of the poor to, or for the benefit of, dependent families or kindred of said prisoners. R. S. c. 142, § 14.

If there are kindred, obliged by law to maintain the prisoner as provided in chapter twenty-seven, such master, or the town obliged to pay his account, has the same remedy against such kindred, as is provided in that chapter for towns incurring expense for relief and support of paupers. R. S. c. 142, § 15.

Persons shall be committed to workhouses, or houses of correction, only upon conviction of the offenses, acts or conditions for which such commitments are by law authorized, before some municipal or police court, or trial justice. Commitments to workhouses may be for terms not exceeding three months. R. S. c. 142, § 16.

Masters of houses of correction and workhouses to give notice to the city or town clerk of births and deaths occurring therein. R. S. c. 61, § 25.

CHAPTER LXIII.

INSANE PERSONS.

The words "insane person" may include an idiotic, non compos, lunatic, or distracted person; but in reference to idiotic or non compos persons this rule does not apply to chapter one hundred and forty-four. R. S. c. 1, § 6.

Parents and guardians of insane minors, if of sufficient ability to support them there, shall, within thirty days after an attack of insanity, without legal examination, send them to one of said hospitals, and give to the treasurer thereof the bond required; or they may send them to some other hospital for the insane, within said period. R. S. c. 144, § 15.

Insane persons, not thus sent to any hospital, shall be subject to examination as hereinafter provided. The municipal officers of towns shall constitute a board of examiners, and on complaint in writing of any blood relative, husband or wife of said alleged insane person, or of any justice of the peace, they shall immediately inquire into the condition of any person in said town alleged to be insane; shall appoint a time and place for a hearing by them of the allegations of said complaint, and shall cause to be given in hand to the person so alleged to be insane, at least twenty-four hours prior to the time of said hearing, a true copy of said complaint, together with a notice of the time and place of said hearing and that he has the right and will be given opportunity then and there to be heard in the matter; shall call before them all testimony necessary for a full understanding of the case; and if they think such person insane, and that his comfort and safety, or that of others interested, will thereby be promoted, they shall forthwith send him either to the Maine insane hospital or to the Eastern Maine insane hospital, with a certificate stating the fact of his insanity, and the town in which he resided or was found at the time of examination, and directing the superintendent to receive and detain him until he is restored or discharged by law, or by the superintendent or trustees. They shall keep a record of their doings, and furnish

a copy to any interested person requesting and paying for it. R. S. c. 144, § 16.

In all cases of preliminary proceedings for the commitment of any person to the hospital, to establish the fact of the insanity of the person to whom insanity is imputed, the evidence of at least two reputable physicians given by them under oath before the board of examiners shall be required, together with a certificate signed by such physicians and filed with said board, that in their opinion such person is insane, such evidence and certificate to be based upon due inquiry and personal examination of the person to whom insanity is imputed; and a certified copy of the physicians' certificate shall accompany the papers of commitment of the insane person to the hospital. R. S. c. 144, § 17; 72 Me. 216; 75 Me. 166; 90 Me. 219; 96 Me. 371.

The officers ordering the commitment of a person unable to pay for his support, or becoming unable to pay for his support after commitment, or their successors, any like officer with power to commit, shall in writing certify that fact to the trustees and that he has no relatives liable and of sufficient ability to pay for his support, and such certificate shall be sufficient evidence in the first instance to charge the town where the insane resided or was found at the time of his arrest for the expenses of his examination and commitment, and to charge the state for the expenses of his support in the hospital, and the treasurer of the hospital shall charge to the state the reasonable expense of his support which shall be paid from the state treasury upon itemized bills therefor audited and approved by the governor and council, until otherwise provided for by appropriation made for that purpose. R. S. c. 144, § 18.

The trustees of the hospitals for the insane may, in their discretion, investigate, or cause to be investigated, the allegations contained in any certificate provided for in section eighteen of chapter one hundred and forty-four of the revised statutes, and should such investigation disclose the fact that any person or municipality was, or may be, lawfully liable for the support of the insane person mentioned in any such certificate, then it shall be the duty of said trustees to collect, by action in the name of the state, if necessary, all sums which have been paid by the state to the hospital for board of such insane person from the person or municipality lawfully liable as aforesaid to pay for the support of such insane person, and thereafter the state shall not be required to pay to said hospital the sum mentioned in said

section eighteen so long as the liability of any person or municipality to support such insane person may lawfully exist. All moneys collected under the provisions of this act shall be forthwith turned over to the state treasurer, who shall receipt for the same; and the expenses of the collection of said moneys shall be charged against and paid out of any sums so collected and turned over, and all bills for such expenses shall be audited by the state auditor and paid out of the state treasury upon the certificate of the state auditor issued therefor and provided by law. P. L. 1909 c. 92.

If the municipal officers neglect or refuse, for three days after complaint is made to them to examine and decide any case of insanity in their town, complaint may be made by any blood relative, husband or wife of said alleged insane person, or by any justice of the peace, to two justices of the peace; and the two justices to whom such application is made shall immediately inquire into the condition of such alleged insane person and shall proceed in the manner provided in section sixteen. R. S. c. 144, § 19; 35 Me. 502; 63 Me. 567.

Notice of the hearing before the municipal officers must be given the alleged insane person and he must be given an opportunity to be heard. 80 Me. 139.

Such justices shall keep a record of their doings and furnish a copy thereof to any person interested requesting and paying for it; they shall be entitled to the same fees as for a criminal examination, to be paid by the person or corporation liable in the first instance for the support of the insane person in the hospital. R. S. c. 144, § 20.

When such justices order a commitment to a hospital, the municipal officers of the town where the insane resides, or such other person as the justices direct, shall cause such order to be complied with forthwith at the expense of the town; and after such commitment is made, the justices shall decide and certify the expenses thereof. R. S. c. 144, § 21.

The certificate of commitment to the hospital after a legal examination, is sufficient evidence, in the first instance, to charge the town where the insane resided, or was found at the time of his arrest, for the expenses of his examination and commitment to the hospital; and when his friends or others file a bond with the treasurer of the hospital in which he is confined the state shall not be liable for his support, unless new action is had by reason of the inability of the patient or his friends longer

to support him; and such action may be had in the same manner, and before the same tribunal, as if he had never been admitted to the hospital. R. S. c. 144, § 22.

The person liable for support of a person when lawfully committed to a hospital, is liable therefor, and for the expenses of his removal, when unlawfully committed and removed as provided in section ten; but the expenses of such removal shall not exceed ten cents a mile from the hospital to the place of commitment. R. S. c. 144, § 23.

Any town thus made chargeable for the expenses of examination and commitment in the first instance, and paying for the examination of the insane and his commitment to a hospital, may recover the amount paid, from the insane, if able, or from persons legally liable for his support, or from the town where his legal settlement is, as if incurred for the expense of a pauper, but if he has no legal settlement in the state, such expenses shall be refunded by the state, and the governor and council shall audit all such claims and draw their warrant on the treasurer therefor. And the reasonable expenses and services of the municipal officers of said town relative to such insane person, shall be included in the amount to be so refunded by the state. No insane person shall suffer any of the disabilities of pauperism nor be deemed a pauper by reason of such support. But the time during which the insane person is so supported shall not be included in the period of residence necessary to change his settlement. R. S. c. 144, § 24.

The treasurer thereof shall charge and collect interest on all debts due to the hospital, for board and clothing of patients, after thirty days from the time when they become due. R. S. c. 144, § 25.

A friend, guardian or relative liable for the support of a patient who has been in either hospital for six months, not committed by order of the supreme judicial court nor afflicted with homicidal insanity, thinking that he is unreasonably detained, may apply to the municipal officers of the town where the insane resides, and they shall inquire into the case, and summon before them any proper testimony, and their decision and order shall be binding on the parties. They shall tax legal costs and decide who shall pay them. If such application is unsuccessful, it shall not be made again until the expiration of another six months. R. S. c. 144, § 26.

When the overseers of the poor of a town, liable for the

expenses of examination of a patient and his commitment to either hospital, are notified by mail by the superintendent, that he has recovered from his insanity, they shall cause him to be removed to their town; and if they neglect it for fifteen days, the superintendent shall cause it to be done at the expense of such town. R. S. c. 144, § 27.

This act shall not affect the liability of any person who is under contract with any city or town for the support of its insane poor, but such contractor shall pay to the city or town whose insane poor he has contracted to support, the expenses of the support of such insane poor in the hospital, during the continuance of his contract, in accordance with the provisions of statute in force at the time such contract was made. P. L. 1907 c. 100, § 11.

The state may recover from the insane, if able, or from persons legally liable for his support, the reasonable expenses of his support in the insane hospital. P. L. 1907 c. 100, § 12.

All acts and parts of acts inconsistent with this act, are hereby repealed. P. L. 1907 c. 100, § 13.

This act shall take effect January first, nineteen hundred and ten. P. L. 1907 c. 100, § 14.

When a patient is discharged from either hospital by the trustees, under section four of chapter one hundred and forty-four of the revised statutes, they shall cause the selectmen of the town, or the mayor of the city from which such patient was received, to be immediately notified by mail, and on receipt of such notice said town or city shall cause such patient to be forthwith removed thereto; and if they neglect such removal for thirty days thereafter, such patient may be removed to said town or city by the trustees, or their order; and the superintendent may maintain an action in his own name, against such city or town, for the recovery of all expenses necessarily incurred in the removal of such patient. R. S. c. 144, § 28.

The preceding sections do not apply to towns having less than two hundred inhabitants, but all insane persons found, and having their residence in such towns, who have no settlement within any town in this state, and who have no means of their own for support, or are without relatives able and liable to support them, shall be supported in the hospital at the expense of the state. R. S. c. 144, § 29.

The judge of probate may appoint guardians to the following

persons belonging to his county, although over twenty-one years of age, on written application of any of their friends, relatives or creditors, or of the municipal officers or overseers of the poor of the town where they reside :

First. Persons insane, or of unsound mind, including married women, who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates, or to protect their rights.

Second. Persons, who, by excessive drinking, gambling, idleness, or debauchery of any kind, have become incapable of managing their own affairs, or who so spend, or waste their estate, as to expose themselves or families to want or suffering, or their towns to expense.

Third. Convicts, committed to the state prison for a term less than for life. R. S. c. 69, § 4; 31 Me. 553; 49 Me. 278, 361; 87 Me. 49; 97 Me. 134.

Guardians may be appointed, on application as aforesaid, for persons certified by the municipal officers of any town to have been committed by them or their predecessors, to either insane hospital, and there remaining, upon proof of the facts, without personal notice to the parties. In all cases where the municipal officers or overseers of the poor are applicants, if they have given at least fourteen days' notice to such person by serving him with a copy of their application, the judge may adjudicate thereon without further notice, or may order such notice, if any, as he thinks reasonable. R. S. c. 69, § 5; 18 Me. 386.

In all other cases, the judge shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving the person for whom a guardian is requested with a copy of the application and order of the court, at least fourteen days before the day of hearing. If upon such hearing, he adjudges that such person is insane, a spendthrift, or incapable as aforesaid, he shall appoint a guardian. R. S. c. 69, § 6; 18 Me. 386; 97 Me. 134.

When such application is made, and notice issued thereon by the judge, the applicants may cause a copy of their application, and the order of the court thereon, to be filed in the registry of deeds for the county; and if a guardian is appointed thereupon, all contracts, except for necessities, and all gifts, sales or transfers of real or personal estate made by such person after said filing and before the termination of the guardianship, are void;

but this section does not add anything to the validity of any such act previous to said filing. R. S. c. 69, § 7.

When a guardian is thus appointed, the judge shall make an allowance, to be paid by the guardian from the ward's estate, for all his reasonable expenses in defending himself against complaint. R. S. c. 69, § 8.

Such guardians have the custody of the persons of their wards, if resident in the state, except so far as the court of probate may from time to time otherwise order; and every guardian appointed over any person for gambling, idleness, drinking or debauchery, shall inculcate upon him habits of sobriety and industry, and when of sufficient health and strength, with the approbation of the judge, may bind him out to labor, not exceeding six months at any one time, or employ him in his own service; giving credit for his earnings, or such sum as he receives therefor. R. S. c. 69, § 9.

CHAPTER LXIV.

HEALTH.

When any person is or has recently been infected with any disease or sickness dangerous to the public health, the local board of health of the town where he is, shall provide for the safety of the inhabitants, as they think best, by removing him to a separate house, if it can be done without great danger to his health, and by providing nurses and other assistants and necessities, at his charge or that of his parent or master, if able, otherwise at that of the town to which he belongs. R. S. c. 18, § 51; 19 Me. 221; 28 Me. 255; 45 Me. 409; 52 Me. 118; 66 Me. 60, 71; 67 Me. 370; 72 Me. 492; 99 Me. 17, 214; 102 Me. 37.

When any infectious or malignant distemper is known to exist in any place out of the state, the local board of health of any town in the state, may, by giving such public notice therein as they find convenient, require any person coming from such place to inform one of them or the town clerk of his arrival and from what place he came, and if he does not, within two hours after arrival, or after actual notice of such requirement, give such

information, he forfeits one hundred dollars to the town. R. S. c. 18, § 52.

The local board of health may prohibit any such person, from going to any part of their town where they think that his presence would be unsafe for the inhabitants; and if he does not comply, they may order him, unless disabled by sickness, forthwith to leave the state in the manner and by the road which they direct; and if he neglects or refuses so to do, any justice of the peace in the county, on complaint of one of said local board of health, may issue his warrant to any proper officer or other person named therein, and cause him to be removed from the state; and if during the prevalence of such distemper in the place where he resides, he returns to any town in this state, without the license of its local board of health, he forfeits not exceeding four hundred dollars. R. S. c. 18, § 53.

The local board of health of any town near or adjoining the state line may, by writing under their hands, appoint suitable persons to attend at any places by which travelers may pass into such town from infected places in other states or provinces, who may examine such passengers as they suspect of bringing with them any infection dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by one of said board; and any such passenger who without such license travels in this state, except to return by the most direct way to the state or province whence he came, after he has been cautioned to depart by the persons so appointed, forfeits not exceeding one hundred dollars. R. S. c. 18, § 54.

Any two justices of the peace may issue a warrant, directed to a proper officer, requiring him to remove any person infected with contagious sickness, under the direction of the local board of health of the town where he is; or to impress and take convenient houses, lodgings, nurses, attendants, and other necessities for the accommodation, safety and relief of the sick. R. S. c. 18, § 55; 66 Me. 71, 309; 67 Me. 294.

When on the application of the local board of health of a town, it appears to any justice of the peace that there is just cause to suspect that any baggage, clothing or goods therein, are infected with any malignant contagious distemper, he shall, by a warrant directed to a proper officer, require him to impress so many men as the said justice thinks necessary, to secure such infected articles, and to post said men as a guard over the place where the articles are lodged, who shall prevent any persons

from removing or approaching such articles, until due inquiry is made into the circumstances. R. S. c. 18, § 56.

He may by the same warrant, if it appears to him necessary, require said officer, under the direction of the local board of health, to impress and take convenient houses or stores for the safe keeping of such infected articles, and cause them to be removed thereto, or otherwise detained, until the local board of health think they are free from infection. R. S. c. 18, § 57; 55 Me. 135.

Said officer, if need be, may break open any house, shop, or other place mentioned in the warrant, where infected articles are, and require such aid as is necessary to execute it; and any person who at the command of any such officer fails to assist in such execution, shall be subject to a fine not exceeding ten dollars. R. S. c. 18, § 58.

The charges for securing such infected articles and of transporting and purifying them shall be paid by the owners thereof, at the price determined by the local board of health. R. S. c. 18, § 59.

When the officer impresses or takes any house, store, lodging, or other necessities, or impresses any man, as herein provided, the parties interested shall have a just compensation therefor, to be paid by the town in which such persons or property were impressed. R. S. c. 18, § 60; 65 Me. 402.

When a malignant infectious distemper prevails in any town wherein the supreme judicial court, the superior court, or court of county commissioners is to be held, said courts may be adjourned and held in any town in said county, by proclamation made in such public manner as such courts judge best, as near their usual place of meeting as they think that safety permits. R. S. c. 18, § 61; 83 Me. 111.

When any person in a jail, house of correction or workhouse, is attacked with any disease, which the local board of health of his town, by medical advice, considers dangerous to the safety and health of other prisoners, or of the inhabitants of the town, they shall, by their order in writing, direct his removal to some place of safety, there to be securely kept and provided for until their further order; and if he recovers from such disease, he shall be returned to his place of confinement. R. S. c. 18, § 62.

If he was committed by an order of court or judicial process, the order for his removal, or a copy thereof attested by the local

board of health shall be returned by them with the doings thereon into the office of the clerk of the court from which such order or process was issued. No such removal shall be deemed an escape. R. S. c. 18, § 63.

The state board of health of Maine shall keep a register of all persons in this state who are known to be affected with tuberculosis. The state board of health shall have sole and exclusive control of said register, and shall not permit inspection thereof nor disclose any of its personal particulars except to its own agents or to local officials when in the interest of the public health and safety it is deemed necessary to do so. P. L. 1909 c. 78, § 1.

Tuberculosis is hereby declared to be an infectious and communicable disease, dangerous to the public health. It shall be the duty of every physician in the State of Maine to report in writing on forms to be furnished by the state board of health the name, age, sex, color, occupation, place where last employed if known, and address of every person known by said physician to have tuberculosis, to the secretary of the state board of health within forty-eight hours after such fact comes to the knowledge of said physician. The name of the householder where the tuberculous person lives, or boards, and such other facts as may be called for on the blank reports issued from the office of the state board of health, shall also be included in the report. It shall also be the duty of the chief officer having charge for the time being of any hospital, dispensary, asylum, sanatorium or other similar private or public institution in the State of Maine to report to the state board of health in like manner the name, age, sex, color, occupation, place where last employed if known and previous address of every patient having tuberculosis who comes into his care or under his observation within forty-eight hours thereafter. It shall also be the duty of said physician or chief officer to give notice to the secretary of the state board of health of the change of address of any tuberculous patient who is, or has lately been under his care if he is able to give such information. P. L. 1909 c. 78, § 2.

In case of the vacation of any apartment or premises by the death or removal therefrom of a person having tuberculosis it shall be the duty of the attending physician, or if there be no such physician, or if the physician be absent, of the owner, lessee, occupant or other person having charge of the said apartments or premises, to notify the health officer or secretary of the local

board of health of said town of said death or removal within twenty-four hours thereafter, and such apartments or premises so vacated shall not again be occupied until duly disinfected, cleansed or renovated as hereinafter provided. P. L. 1909 c. 78, § 3.

When notified of the vacation of any apartments or premises as provided in section three hereof, the health officer or secretary of the local board of health or his agent, shall within twenty-four hours thereafter visit said apartments or premises, and shall order and direct that, except for purposes of cleansing or disinfection, no infected article shall be removed therefrom until properly and suitably cleansed or disinfected, and said local board of health shall determine the manner in which such apartments or premises shall be disinfected, cleansed or renovated in order that they may be rendered safe and suitable for occupancy. If the health authorities determine that disinfection is sufficient to render them safe and suitable for occupancy, such apartments or premises together with all infected articles therein, shall immediately be disinfected by the health authorities at public expense, or, if the owner prefers, by the owner at his expense, to the satisfaction of health authorities. P. L. 1909 c. 78, § 4.

In case the orders or directions of the local board of health requiring the disinfection, cleansing or renovation of any apartments or premises or any articles therein as hereinbefore provided, shall not be complied with within forty-eight hours after such orders or directions shall be given, the health officer may cause a placard in words and form substantially as follows to be placed upon the door of the infected apartments or premises: "Tuberculosis is a communicable disease. These apartments have been occupied by a consumptive and may be infected. They must not be occupied until the order of the health officer directing their disinfection or renovation has been complied with. This notice must not be removed under the penalty of the law except by the local board of health or other duly authorized official." P. L. 1909 c. 78, § 5.

Any person having tuberculosis who shall dispose of his sputum, saliva, or other bodily secretion or excretion so as to cause offense or danger to any person or persons in the same room or apartment, house, or part of a house, shall, on complaint of any person or persons subjected to such offense or danger, be deemed guilty of a nuisance and any person subjected to such a nuisance may make complaint in person or writing to the local

board of health of any town where the nuisance complained of is committed. And it shall be the duty of the local board of health receiving such complaint to investigate, and if it appears that the nuisance complained of is such as to cause offense or danger to any person in the same room, apartment, house, or part of a house, they shall serve a notice upon the person so complained of, reciting the alleged cause of offense or danger and requiring him to dispose of his sputum, saliva, or other bodily secretion or excretion in such manner as to remove all reasonable cause of offense or danger. Any person failing or refusing to comply with orders or regulations of the local board of health of any town, requiring him to cease to commit such nuisance, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not more than ten dollars. P. L. 1909 c. 78, § 6.

It shall be the duty of a physician attending a patient having tuberculosis to take all proper precautions and to give proper instructions to provide for the safety of all individuals occupying the same house or apartment, and if no physician be attending such patient this duty shall devolve upon the local board of health, and all duties imposed upon physicians by any sections of this act shall be performed by the local board of health in all cases of tuberculosis not attended by a physician, or when the physician fails to perform the duties herein specified, and shall so report. P. L. 1909 c. 78, § 7.

The precautionary measures carried out by physicians, local boards of health, and others to prevent the transmission of infection to other persons shall be in accordance with the advice given by the state board of health in its printed circulars, and reports to the state board of health shall include a statement of what procedures and precautions have been taken to prevent the spread of infection. In the cases of needy patients who are not able to provide themselves with proper spit-cups and other supplies or material in the opinion of the attending physician needed to prevent the communication of infection, the physician may send a requisition to the local board of health of the town in which the tuberculous patient lives for said things to aid him in preventing the spread of the disease, and all local health officers or secretaries of local boards of health shall honor, as far as possible, requisition signed by the attending physician, and the bill for these supplies shall be paid by the town. P. L. 1909 c. 78, § 8.

Any physician or person practicing as a physician who shall

knowingly report as affected with tuberculosis any person who is not so affected, or who shall willfully make any false statement concerning the name, age, sex, color, occupation, or other facts called for on the blanks prepared by the state board of health, of any person reported as affected with tuberculosis, or who shall certify falsely as to any of the precautions taken to prevent the spread of infection, shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not more than one hundred dollars. P. L. 1909 c. 78, § 9.

Upon the recovery of any person having tuberculosis, it shall be the duty of the attending physician to make a report of this fact to the secretary of the state board of health, who shall record the same in the records of his office, and shall relieve said person from further liability to any requirements imposed by this act. P. L. 1909 c. 78, § 10.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished, except as herein otherwise provided, by a fine of not less than five dollars nor more than fifty dollars. P. L. 1909 c. 78, § 11.

When any source of filth, or other cause of sickness, is found on private property, the owner or occupant thereof shall, within twenty-four hours after notice from the local board of health or health officer, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he forfeits not exceeding one hundred dollars; and said local board of health or health officer shall cause said nuisance to be removed or discontinued; and all expenses thereof shall be repaid to the town by such owner or occupant, or by the person who caused or permitted it. R. S. c. 18, § 64; 57 Me. 436; 65 Me. 426; 87 Me. 473.

Whoever personally or through the agency of another leaves or deposits the carcass of a dead horse, cow, sheep, hog or of any other of the larger domestic animals in any place where it may cause a nuisance shall, upon receiving a notice to that effect from the local board of health, promptly remove, bury or otherwise dispose of such carcass, and if he fails to do so within such time as may be prescribed by the local board of health, shall be punished by a fine of not less than five, nor more than twenty-five dollars, or by imprisonment not exceeding one month. R. S. c. 18, § 65.

No refuse or waste material of any kind shall be deposited or dumped within the limits of any public way except upon written authority of the municipal officers. P. L. 1909 c. 157, § 1.

Any person convicted of violating the provisions of this act shall be subject to a fine not exceeding ten dollars, to be recovered to the use of the town where the offense is committed. P. L. 1909 c. 157, § 2.

No person shall expectorate or spit on any public sidewalk, or public street crossing, or cross walk, or, except in the receptacles provided for the purpose, upon the floor in any city or town hall, in any courthouse or court room, in any factory, in any public library or museum, in any church or theatre, in any lecture or music hall, in any ferryboat or steamboat, in any railroad car, except a smoking car, in any street or inter-urban railway car, in any railroad or railway station, or waiting room or on any sidewalk or platform connected therewith. P. L. 1909 c. 76, § 1.

The publication or sale or distribution by hand or otherwise within this state of any circular, pamphlet or book containing recipes or prescriptions for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compound designed to prevent conception, or tending to produce miscarriage or abortion is hereby prohibited; and for each copy thereof, so published and sold, containing such prohibited recipes or prescriptions, the publisher and seller shall each be deemed guilty of a misdemeanor, and shall be liable to the same penalties provided for a violation of the preceding section. Any person or persons, their agents or clerks, who shall fail to comply with the requirements herein expressed, shall be deemed guilty of a misdemeanor and shall be liable to a fine not less than fifty nor more than one hundred dollars, or to imprisonment in the county jail not exceeding three months, or both, for each and every offense. P. L. 1909 c. 192, § 1.

Any person, firm or corporation who, by himself, his servant or agent, or as the servant or agent of any other person or firm, shall leave, throw, or deposit, or have in his possession with intent to leave, throw or deposit upon the doorstep, hall, porch, doorway, vestibule, or premises owned or occupied by another, any patent or proprietary medicine or any preparation, pill, tablet, or drug, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty nor more than one

thousand dollars or by imprisonment for not less than thirty days nor more than one year. P. L. 1909 c. 192, § 2.

Any person injured in his comfort, property or the enjoyment of his estate by a common and public, or a private nuisance, may maintain against the offender an action on the case for his damages, unless otherwise specially provided. R. S. c. 22, § 13; 44 Me. 156; 49 Me. 30; 51 Me. 504; 57 Me. 377; 75 Me. 378; 80 Me. 33, 310; 85 Me. 281.

(NOTE: For provisions relating to medical examination of scholars suspected of being diseased or infected, as covered by chapter thirty-one, laws of nineteen hundred and nine, see heading "Schools". For provisions relating to a school physician, as covered by chapter seventy-three, laws of nineteen hundred and nine, see heading "Schools". For power of committee to exclude from schools children not vaccinated, as covered by revised statutes, chapter fifteen, section thirty-five, see heading "Schools". For provisions in relation to purchase of second-hand books for schools, as covered by revised statutes, chapter fifteen, section nineteen, as amended by chapter one hundred and thirty-one, laws of nineteen hundred and nine, see heading "Schools".)

If a master, seaman, or passenger of a vessel, in which there is, has lately been, or is suspected to have been, any infection, or which has come from a port where any infectious distemper prevails, dangerous to the public health, refuses to answer, on oath, such questions as are asked him relating to such infection or distemper, by the local board of health of the town to which such vessel comes, which oath any member of said board may administer, he shall forfeit not exceeding two hundred dollars, or be imprisoned not more than six months. R. S. c. 18, § 66.

When a vessel arrives at a port, having on board any person infected with a malignant disease, the master, commander, or pilot shall anchor it at some convenient place below the town of such port, at a distance safe for the inhabitants thereof and the persons on board other vessels in said port; and no person or thing on board shall be brought on shore, until the local board of health gives its written permit. R. S. c. 18, § 67; 41 Me. 363; 45 Me. 496; 52 Me. 118.

For the willful violation of the preceding section, such master or commander forfeits not exceeding two hundred, and the pilot not exceeding fifty dollars for each offense. R. S. c. 18, § 68.

The local board of health of a seaport town may cause vessels arriving there to perform quarantine at such place and under

such regulations as they may judge expedient, when they think that the safety of the inhabitants requires it; and whoever neglects or refuses to obey such orders and regulations, shall forfeit not exceeding five hundred dollars, or be imprisoned not exceeding six months. R. S. c. 18, § 69.

When such local board of health thinks it necessary to order all vessels, arriving there from any particular port or ports, to perform quarantine, they shall give notice thereof to the pilots of their port, who shall make it known to the master of all vessels which they board. A pilot who neglects to do so, or who contrary thereto pilots any vessels up to said seaport town, forfeits not exceeding one hundred dollars. R. S. c. 18, § 70; 41 Me. 363.

If the master or commander of a vessel takes it up to any seaport town after notice that a quarantine has been so directed for all vessels coming from the port or place whence his vessel sailed, or by false declarations, or otherwise, fraudulently attempts to elude such directions; or lands or suffers to be landed from his vessel any person or thing, without permission of the local board of health, he shall be punished as provided in section sixty-nine. R. S. c. 18, § 71.

The local board of health of every seaport town requiring vessels to perform quarantine shall provide, at the expense of such town, a suitable number of red flags at least three yards in length; and the master of every vessel ordered to perform quarantine shall during the term thereof, cause one of them to be continually kept at the head of the mainmast of his vessel; and no person shall board such vessel during said term unless by permission of said local board of health; if he does, he shall be thereafter held liable to the same regulations and restrictions as those belonging to said vessel; and shall there be detained by force, if necessary, until discharged by said local board of health. R. S. c. 18, § 72.

In every seaport town the health officer may perform all the duties and exercise all the authority of the local board of health in requiring vessels to perform quarantine. R. S. c. 18, § 73.

Expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person, or the owner of the vessel or goods, as the case may be. R. S. c. 18, § 74.

A town may establish therein one or more hospitals for the

reception of persons having the small-pox or other diseases dangerous to the public health; or its local board of health may license any building therein as a hospital, which shall be under the control of said board; but no such hospital shall be within one hundred rods of an inhabited dwelling-house in an adjoining town without the consent of the local board of health. R. S. c. 18, § 75.

Whoever inoculates himself or any other person, or suffers himself to be inoculated with the small-pox, unless at some lawful hospital, forfeits not exceeding one hundred dollars for each offense. R. S. c. 18, § 76.

When a hospital is so established or licensed the physicians, the persons inoculated or sick therein, the nurses, attendants, and all who come within its limits, and all furniture or other articles used or brought there, shall be subject to the regulations made by the local board of health. R. S. c. 18, § 77.

When the small-pox or any other disease dangerous to the public health breaks out in a town, the local board of health shall immediately provide such hospital or place of reception for the sick and infected, as they judge best for the accommodation and safety of the inhabitants; such hospitals and places are subject to their regulations the same as established hospitals; and they shall cause such sick and infected to be removed thereto, unless their condition will not permit it without immediate danger; in which case, the house or place where the sick are, shall be deemed a hospital for every purpose aforesaid; and all persons residing in or in any way concerned with it, are subject to hospital regulations. R. S. c. 18, § 78; 45 Me. 496; 64 Me. 120; 66 Me. 71, 309.

When any disease dangerous to the public health exists in a town, the municipal officers shall use all possible care to prevent its spread and shall give public notice of infected places to travelers, by displaying red flags at proper distances, and by all other means most effectual, in their judgment, for the common safety. R. S. c. 18, § 79; 64 Me. 120.

If any physician or other person in such hospitals or places of reception, attending, approaching, or concerned therewith, violates any lawful regulations in relation thereto, with respect to himself or his or another's property, he forfeits not less than ten, nor more than one hundred dollars, for each offense. R. S. c. 18, § 80.

All forfeitures mentioned in the last thirty preceding sections, except otherwise provided, inure to the town where the offence is committed. R. S. c. 18, § 81.

Towns, cities and village corporations may make by-laws or ordinances, not inconsistent with law, and enforce them by suitable penalties, for the purpose and with the limitations following :

Third. Respecting infectious diseases and health. R. S. c. 4, § 93.

See power of local board of health to make orders and by-laws, post.

Whoever knowingly and willfully poisons, defiles or in any way corrupts the waters of any well, spring, brook, lake, pond, river or reservoir, used for domestic purposes for man or beast, or knowingly corrupts the sources of any public water supply, or the tributaries of said sources of supply in such manner as to affect the purity of the water so supplied, or knowingly defiles such water in any manner, whether the same be frozen or not, or puts the carcass of any dead animal or other offensive material into said waters, or upon the ice thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year. R. S. c. 129, § 1, as amended by P. L. 1907 c. 104.

The owner or person having charge of any animal, or meat or milk of any animal affected with tuberculosis or other contagious or infectious disease, who, knowing that the animal is thus affected, shall hold the animal, or its meat or milk, for human food, shall be punished by a fine of not less than five, nor more than fifty dollars. R. S. c. 129, § 2.

Whoever sells or offers for sale, milk or cream from cows known to be diseased, or from cows sick, or fed upon any substance deleterious to its quality, or kept in a filthy or unsanitary condition, or milk to which water or any foreign substance has been added, or sells or offers for sale as pure milk, any milk from which the cream has been taken, or milk in or from cans or other utensils that are not kept in a clean or sanitary condition, shall, for the first offense, be punished by a fine not exceeding fifty dollars, and for a second offense by a fine not exceeding one hundred dollars. When milk shall, by analysis, be found to contain over eighty-eight and one-fourth per cent of water or less than eight and one-half per cent of solids exclusive of fat, it shall be deemed *prima facie* evidence that said milk has been watered,

and when milk, by analysis, shall be found to contain less than eleven and three-fourths per cent of solids and less than three and one-fourth per cent of fat, it shall be deemed *prima facie* milk from which cream has been taken, and any milk which, by analysis, shall be found to contain any foreign substance, shall be deemed milk to which a foreign substance has been added. R. S. c. 129, § 3, as amended by P. L. 1905 c. 40 and further amended by P. L. 1909 c. 144.

Whoever sells diseased, corrupted or unwholesome provision for food or drink, knowing it to be such, or fraudulently adulterates, for the purpose of sale, any substance intended for food, or any wine, spirits or other liquors intended for drink, so as to render them injurious to health, shall be punished by imprisonment for not more than five years, or by a fine not exceeding one thousand dollars; and whoever kills or causes to be killed for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in possession with intent to sell for food, the meat of any calf killed when less than four weeks old, shall be punished by imprisonment in the jail or house of correction, not exceeding thirty days, or by fine not exceeding fifty dollars; and all such meat exposed for sale, or kept with intent to sell, may be seized and destroyed by any board of health, or health officer, or any sheriff, deputy sheriff, constable, or police officer. R. S. c. 129, § 4.

When complaint is made on oath to any court or justice authorized to issue warrants in criminal cases, that the meat of calves killed when less than four weeks old, is kept or concealed with intent to sell the same for purposes of food, such magistrate, when satisfied that there is reasonable cause for such belief, may issue a warrant to search therefor. R. S. c. 129, § 5.

No person shall manufacture, sell, expose for sale or have in his possession with intent to sell, or take orders for the future delivery of any article, substance or compound made in imitation of yellow butter or cheese, and not made exclusively and wholly of cream or milk, or containing any fats, oil or grease not produced from milk or cream, whether said article, substance or compound be named oleomargarine, butterine or otherwise named. R. S. c. 129, § 6, as amended by P. L. 1905 c. 38; 95 Me. 94.

Every inspector of milk, sheriff, deputy sheriff or constable shall institute complaint for violations of the preceding section whenever he has reasonable cause for suspicion, and on the information of any person who shall lay before him satisfactory evi-

dence of the same. Said inspector or officer shall take specimens of suspected butter or cheese and cause the same to be analyzed or otherwise satisfactorily tested. The expense of such analysis or test not exceeding twenty dollars in any one case, may be included in the costs of prosecution, and taxed and allowed to the officer paying the same. R. S. c. 129, § 7.

For the purposes of this chapter, the terms "butter" and "cheese" mean the products usually known by those names, and which are manufactured exclusively from milk or cream, or both, with salt and rennet, and with or without coloring matter. R. S. c. 129, § 8, as amended by P. L. 1905 c. 38, § 6.

Whoever, by himself or his agent, sells or offers for sale eggs that have been in cold storage or limed, or that have been preserved in any manner and are not what are usually denominated fresh eggs, without notice to the purchaser or purchasers, knowingly and with intent to deceive, shall be punished by imprisonment not exceeding thirty days, or by fine not exceeding one hundred dollars. R. S. c. 129, § 9.

No person shall furnish oleomargarine in any hotel, restaurant or boarding-house, or at any lunch counter, to a guest or patron thereof, instead of butter, without notifying said guest or patron that the substance so furnished is not butter. P. L. 1905 c. 38, § 2.

No person shall sell or offer for sale to any person who asks, sends or inquires for butter or cheese, any substance or compound made in imitation of butter or cheese. P. L. 1905 c. 38, § 3.

No person shall sell, offer or expose for sale any renovated butter, unless the words "renovated butter" shall be conspicuously and plainly stamped, labeled or marked, so that said words cannot be easily defaced, upon the top and side of every tub, firkin, box or package containing said article or compound. The seller at retail of said article or compound, which is not in the original package, shall attach to each package so sold and deliver therewith to the purchaser a label or wrapper bearing in a conspicuous place upon the outside of the package the words "renovated butter." P. L. 1905 c. 38, § 4.

Any person who violates any provision of the four preceding sections shall be punished for the first offense by a fine not exceeding one hundred dollars and for the second offense by a fine not exceeding two hundred dollars. Municipal and police courts and trial justices are hereby vested with the original jurisdiction concurrent with the supreme judicial and superior courts,

to try and upon conviction, to punish for the offenses against the provisions of this act. P. L. 1905 c. 38, § 5, as amended by P. L. 1907 c. 22.

It shall be unlawful for any person within this state to manufacture, sell, transport, or offer for sale or transportation, any article of food or drug which is adulterated or misbranded within the meaning of this act. P. L. 1907 c. 124, § 1.

The term "drug" as used in this act, shall include all medicines and preparations recognized in the United States pharmacopœia or national formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food" as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or compound. P. L. 1907 c. 124, § 2.

For the purposes of this act an article shall be deemed to be adulterated:

In case of drugs—

First. If when a drug is sold under or by a name recognized in the United States pharmacopœia or national formulary, it differs from the standard strength, quality or purity, as determined by the test laid down in the United States pharmacopœia or national formulary official at the time of investigation; *provided*, that no drug defined in the United States pharmacopœia or national formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box or other container thereof although the standard may differ from that determined by the test laid down in the United States pharmacopœia or national formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In case of confectionery—

If it contains terra alba, barytes, talc, chrome yellow, or other mineral substances of poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

In case of food—

First. If any substance has been mixed and packed with it

so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituents of the article have been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health; *provided*, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Sixth. If it consist in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. P. L. 1907 c. 124, § 3.

The term "misbranded" as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular and to any food or drug product which is falsely branded as to the state, territory, or country in which it is manufactured or produced.

For the purpose of this act an article shall also be deemed to be misbranded:

In case of drugs—

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or, except in the case of a physician's prescription compounded by a physician or a regis-

tered pharmacist, if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or any preparation of any such substances contained therein.

In the case of food—

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; *provided*, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale, provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring only. And *provided further*,

that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding. P. L. 1907 c. 124, § 4.

The director of the Maine agricultural experiment station shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of foods and drugs manufactured, sold, transported, or offered for sale or transportation within this state, or which may be submitted for examination by any health, food or drug officer of any town, city or county within the state. The said director may also adopt or fix standards of purity, quality or strength when such standards are not specified or fixed by law and shall publish them together with such other information concerning articles of food and drugs as may be of public benefit. Such rules, regulations and standards shall, where possible, conform to and be the same as the rules and regulations adopted from time to time for the enforcement of act of Congress approved June thirtieth, nineteen hundred and six, and known as "The Food and Drugs Act." P. L. 1907 c. 124, § 5.

The director of the Maine agricultural experiment station shall analyze, or cause to be analyzed, samples of articles of food and drugs on sale in Maine, and at such times and to such extent as said director may determine. And said director, in person or by deputy, shall have free access at all reasonable hours to any place wherein articles of food or drugs are offered for sale, and upon tendering the market price of any such article may take from any person samples for analysis. The result of all analysis of articles of food and drugs made by said director shall be published by him in the bulletins or reports of the experiment station, together with the names of the persons from whom the samples were obtained, and the names of the manufacturers thereof. P. L. 1907 c. 124, § 6.

When the said director becomes cognizant of the violation of any of the provisions of this act he shall cause notice of such fact, together with a copy of the findings, to be given to the party or parties concerned, including those from whom the sample was obtained, and to the party, if any, whose name appears upon the label as manufacturer, packer, wholesaler, retailer or other dealer. The parties so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed

as aforesaid. Notices shall specify the date, hour and place of the hearing. The hearing shall be private and the parties interested therein may appear in person or by attorney. If the party whose name appears upon the label resides without the state he shall be entitled to reasonable notice by mail at such address as may, with due diligence, be obtained. P. L. 1907 c. 124, § 7.

Any person who adulterates or misbrands, within the meaning of this act, any article of food or drugs, or any person who sells, transports, offers or exposes for sale or transportation any adulterated or misbranded article of food or drugs, shall be punished by a fine not exceeding one hundred dollars for the first offense and not exceeding two hundred dollars for each subsequent offense. Trial justices and municipal and police courts are hereby vested with original jurisdiction concurrent with the supreme judicial and superior courts, to try, and, upon conviction, to punish, for offenses against the provisions of this act. P. L. 1907 c. 124, § 8.

No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of this act. P. L. 1907 c. 124, § 9.

The director of the Maine agricultural experiment station shall diligently enforce all the provisions of this act, and when after due hearing he is convicted that the provisions of this act have been violated he shall, in his discretion prosecute all offenses against the same. P. L. 1907 c. 124, § 10.

There shall be appropriated annually from the state treasury the sum of nine thousand dollars in favor of the Maine agricultural experiment station, and the same shall be expended by the directors of said station in executing the provisions of the laws relating to the collection, examination, inspection and analysis of agricultural seeds, concentrated commercial feeding stuffs, commercial fertilizer and foods and drugs. Payments of said appropriation shall be made quarterly upon the order of the gov-

ernor and council, who shall draw a warrant for that purpose. The director of said station shall annually publish in the reports or bulletins of the station a classified account of all receipts and expenditures under this act. P. L. 1909 c. 115, § 1.

The word "person" as used in this act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person. P. L. 1907 c. 124, § 12.

The commissioner of agriculture shall, either in person or by duly authorized agent or assistant, diligently inquire into and investigate the production, manufacture, transportation, storage and sale of milk, cream, butter and all other dairy products, substitutes therefor and imitations thereof. And said commissioner, his agents or assistants, shall have access at all reasonable hours, to all places of business, factories or carriages, cans or other vessels used or which he or they believe to be used in the production or handling of milk or any other dairy product, substitute therefor or imitation thereof, and upon tendering the market price of a sample of milk or other dairy products, substitute therefor or imitation thereof, may take such sample from any person, firm, corporation, association or society, and said commissioner of agriculture shall cause all samples taken by authority of this act to be analyzed. P. L. 1909 c. 35, § 1.

Any person who hinders, obstructs, or in any way interferes with the commissioner of agriculture, his agents or assistants, in the performance of his or their duty, herein above set forth, by refusing entrance to any place where he is authorized to enter, or access to any receptacle to which he is authorized to have access, or by refusing to deliver to him, his agents or assistants, a sample of milk or any other dairy product, substitute therefor or imitation thereof, sold, offered or exposed for sale by the person to whom such request is made if the value thereof is tendered, or shall in any other manner hinder, obstruct or interfere with said commissioner, his agents or assistants in the performance of any of their said duties, shall be punished by a fine of one hundred dollars for the first offense and two hundred dollars for each subsequent offense. P. L. 1909 c. 35, § 2.

The commissioner of agriculture shall publish the results of all analyses with the names of the persons, firms, corporations, associations and societies from which the samples analyzed were taken, together with such suggestions as he may deem advisable, in the regular or special bulletins issued by the department of agriculture. He shall also, in his discretion, issue each month a report of the results of all analyses, for distribution to all such newspapers in the state as may request a copy. P. L. 1909 c. 35, § 3.

Any person, firm, corporation, association or society who shall sell or deliver milk or cream to any person from a wagon or other conveyance, depot or store, or who shall sell or deliver milk to a hotel, restaurant, boarding-house or any public place, shall be considered a milk dealer within the meaning of this act, and shall on or before the first day of April in each year register with the commissioner of agriculture, furnishing such information as may be required, upon blanks issued and furnished by said commissioner of agriculture to such persons as may request the same. And every such registration shall expire April first, next after its issue and shall be given only to the milk dealer owning or leasing the vehicle or place from which sales or supplies are to be made, and shall not be transferred. Upon receipt of the application for registration, containing the information required, the commissioner shall issue to said applicant a certificate of registration, which certificate shall be posted in a conspicuous place in the store or depot from which sale or supply is made, and the number of the certificates of registration for each wagon or other vehicle shall be placed in a conspicuous place on said wagon or other vehicle. Should any person, firm, corporation, association or society desire to become a milk dealer, as provided by this section, before the first day of April in any year, he or they shall, prior to engaging in the business, register with the commissioner of agriculture in the same manner as hereinbefore provided, for each place or vehicle from which sale or supply is to be made. Any dealer who neglects or refuses to register with the commissioner of agriculture, or to post certificates of registration in the store or depot from which sale or supply is made, or to post the number of the certificate of registration on the wagon or other vehicle from which sale or supply is made, as provided in this section, forfeits fifty dollars to be recovered in an action of debt, to be prosecuted in the name of the state by the county attorney for the county in which such violation of this statute has occurred, but the pro-

visions of this section shall not apply to milk or cream delivered to a creamery or butter or cheese factory. All provisions of law now existing requiring the licensing of milk dealers as they are known under this section shall be and hereby are repealed when this act shall take effect. P. L. 1909 c. 35, § 4.

The commissioner of agriculture shall, either in person or by duly authorized agent or assistant, diligently enforce, in the name of the state, the laws regarding the production, manufacture, transportation, storage and sale of milk and other dairy products, substitutes therefor or imitations thereof, including oleomargarine and renovated butter, and for the above purpose he may employ such agents, assistants, chemists, counsel and clerks, and he may purchase such samples of milk, cream and other dairy products, substitutes therefor or imitations thereof, and such stationery, postage, printed matter and other supplies incidental thereto, as may be necessary for the proper enforcement of said laws, and for such expenses there shall be appropriated annually the sum of four thousand dollars, to be paid upon the approval of the governor and council upon the presentation of proper vouchers. P. L. 1909 c. 35, § 5.

The county attorney for the county in which a violation of these statutes has occurred, shall when called upon to do so by the commissioner of agriculture or either of his duly authorized agents or assistants, give all the aid in his power to secure the enforcement of this chapter, and shall prosecute cases arising under the provisions of this chapter, or the provisions of other statutes relating to dairy products, substitutes therefor or imitations thereof. P. L. 1909 c. 35, § 6.

Trial justices and municipal and police courts are hereby vested with original jurisdiction concurrent with the supreme and superior courts, to try, and, upon conviction, to punish, for offenses against the provisions of this act and all other statutes relating to the production, manufacture, transportation, storage and sale of milk, cream, butter, cheese and all other dairy products, substitutes therefor or imitations thereof. P. L. 1909 c. 35, § 7.

The mayor and aldermen, selectmen, assessors, city marshal, chief of police and constables in every city and town shall make complaint and prosecute all violations of this chapter and promptly enforce all laws against illegal sale and transportation of dairy products. One-half of the penalty shall go to the town

in which the offense is committed and the other half to the complainant. P. L. 1909 c. 35, § 8.

Cities may establish localities for, and regulate the sale of fresh meat and fish, therein, and fix penalties for breach thereof. R. S. c. 4, § 93, par. 11.

The municipal officers of towns, shall cause all cattle, swine and sheep therein infected with lung murrain or pleuro-pneumonia, or any other contagious disease, or which have been exposed to infection, to be secured or collected in some suitable place or places therein, and kept isolated; and when taken from the possession of their owners, one-fifth of the expense thereof shall be paid by the town, and four-fifths by the state, such isolation to continue so long as the existence of such disease or other circumstances render it necessary: or they may direct the owners thereof to isolate such cattle, swine and sheep, upon their own premises, and any damage or loss sustained thereby shall be paid as aforesaid. R. S. c. 19, § 15.

They may prohibit the departure of cattle from any enclosure, and exclude cattle therefrom. R. S. c. 19, § 16.

They may in writing regulate or prohibit the passage from, to or through their towns, or from place to place therein, of any neat cattle, and may arrest and detain, at the cost of the owners, all cattle found passing in violation of such regulations, and may take all other necessary measures for the enforcement of such prohibition, and for preventing the spread of any such disease in their towns, and the immediate vicinity thereof. R. S. c. 19, § 17.

Such regulations shall be recorded in the records of their towns, and shall be published in said towns in such manner as said regulations provide. R. S. c. 19, § 18.

Whoever sells or disposes of any animal infected or known to have been exposed to infection, within one year after such exposure, without the knowledge and consent of the municipal officers, shall be fined not exceeding five hundred dollars or be imprisoned not exceeding one year. R. S. c. 19, § 19.

Whoever disobeys the orders of said municipal officers made in conformity with sections sixteen and seventeen, or drives or transports any neat cattle contrary to the regulations so made, recorded and published, shall be punished as provided in section nineteen. R. S. c. 19, § 20.

Whoever knows or has reason to suspect the existence of any fatal contagious disease among the domestic animals in his possession or under his care, shall forthwith give notice thereof to the local board of health, and for failure to do so, shall be punished, as provided in section nineteen. R. S. c. 19, § 21.

Whenever a local board of health or its executive officer has notice of, or suspects the existence of, a case of tuberculosis or glanders in domestic animals, such board or officer shall forthwith investigate or cause to be investigated the truth of such notification or the grounds for such suspicion; and if there appear to be good grounds for believing that such disease is present, the local board of health or its executive officer shall notify the state cattle commissioners, reciting in said notification the ground for their belief or suspicion. R. S. c. 18, § 89.

Any town whose officers neglect or refuse to carry into effect the provisions of sections fifteen to nineteen inclusive, forfeits not exceeding five hundred dollars for each day's neglect. R. S. c. 19, § 22.

The municipal officers of towns may, when they deem it necessary to carry into effect the purposes of sections fifteen to eighteen inclusive, take and hold possession for a term not exceeding one year, of any land within their towns without buildings other than barns thereon, for enclosing and isolating any cattle, and they shall cause the damages sustained by the owners in consequence thereof, to be appraised by the assessors thereof, and they shall further cause a description of such land, setting forth the boundaries thereof, and the area as nearly as may be estimated, together with said appraisal, to be entered in the records of the town. The amount of said appraisal shall be paid as provided in section fifteen, in such sums and at such times as they may order. If such owner is dissatisfied with the appraisal, he may, in an action on the case, recover from the town a fair compensation for the damages sustained by him; but no costs shall be taxed, unless the damages recovered in such action, exclusive of interest, exceed the appraisal of the assessors. The state shall reimburse the town four-fifths of any sum so recovered. R. S. c. 19, § 23.

Whenever such disease exists in a town the municipal officers shall forthwith give notice thereof to the State of Maine Cattle Commission. R. S. c. 19, § 24.

Sections fifteen to twenty-four inclusive apply to horses

infected with glanders, or any other contagious disease. R. S. c. 19, § 25.

It shall be the duties of the assessors of all cities, towns and plantations to keep a record of all pure blooded cattle kept for breeding purposes, and shall report to the secretary of the cattle commissioners on or before the first day of July of each year, the name of the owner, number of each herd, age and sex, such reports to be made upon blanks furnished by the cattle commissioners. P. L. 1905 c. 83, § 1.

All persons selling pure blooded cattle or cattle represented to be pure blooded, for breeding purposes, shall, before delivery, make a report to said commissioners on blanks furnished by them on application, stating the number of cattle sold, their age and sex and to whom sold, and before delivery thereof such cattle shall be tested with tuberculin and a certificate of health be given by said commissioners or some person duly authorized by them to the seller and purchaser; *provided* that no such certificate shall be required in case the cattle so sold shall have been tested, within six months under the direction of the cattle commissioners and a certificate of health granted by them within that time, except in cases of cattle that have been so tested and certified within twelve months previous to such sale, or calves under four months old. P. L. 1909 c. 83, § 2, as amended by P. L. 1905 c. 151, § 1.

Any person bringing pure blooded cattle into this state for breeding purposes shall report to the commissioners the name and residence of seller, number purchased, age and sex upon blanks furnished by the commissioners upon application. Such cattle shall remain upon the purchaser's premises thirty days from date of arrival and within that time be tested by order of the commissioners. But nothing herein contained shall be construed as requiring the testing of calves under four months old. P. L. 1905 c. 83, § 3.

Whoever violates any provision of the three preceding sections shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars for each offence. P. L. 1909 c. 151, § 2.

The state board of health as hereby established shall consist of six members, appointed by the governor, with the advice and consent of the council, and a secretary elected as hereinafter provided. The governor, with the advice and consent of the council, shall annually appoint a member of said board to hold office

for six years from the thirty-first day of January of each year. The members so appointed by the governor shall elect a secretary, who shall, by virtue of such election, become a member of the board, and its executive officer. The board may elect one of their own number secretary, in which case his term of office as a member by appointment of the governor shall expire, and the governor, with the advice and consent of the council, shall appoint another member to complete the full number of the board. R. S. c. 18, § 1.

The state board of health shall have the general supervision of the interests of health and life of the citizens of the state. They shall study the vital statistics of the state, and endeavor to make intelligent and profitable use of the collected records of deaths and of sickness among the people; they shall make sanitary investigations and inquiries respecting the causes of disease and especially of communicable diseases and epidemics, the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits and circumstances on the health of the people; they shall investigate the causes of disease occurring among the stock and domestic animals in the state, and the methods of remedying the same; they shall gather such information in respect to all these matters as they may deem proper for diffusion among the people; they shall, when required or when they shall deem it best, advise officers of the government, or other boards within the state, in regard to the location, drainage, water supply, disposal of excreta, heating and ventilation of any public institution or building; they shall from time to time examine and report upon works on the subject of hygiene for the use of the schools of the state; they shall have general oversight and direction of the enforcement of the statutes respecting the preservation of health; and they shall, in the month of January, make report to the governor and council of their doings, investigations and discoveries during the year ending on the thirty-first day of December, with such suggestions as to legislative action as they may deem necessary. R. S. c. 18, § 2.

The board shall meet quarterly at Augusta and at such other places and times as they may deem expedient. Suitable accommodations for the meeting of the board, and office room for its secretary shall be provided at the state capitol. A majority shall be a quorum for the transaction of business. They shall choose annually one of their number to be their president, and may adopt rules and by-laws subject to the provisions of this chapter. They may send the secretary, or a committee of the

board, to any part of the state, when deemed necessary to conduct an investigation within the scope of their prescribed work. R. S. c. 18, § 3.

The secretary shall hold his office as long as he shall faithfully discharge the duties thereof; he may be removed for just cause at a regular meeting of the board, by vote of a majority of the members. He shall keep his office at the state capitol, and shall perform the duties prescribed by law or required by the board. He shall keep a record of the transactions of the board; shall have the custody of all books, papers, documents, and other property belonging to the board, which may be deposited in his office; shall, as far as practicable, communicate with other state boards of health, and with the local boards of health within this state; shall keep and file all reports received from such local boards of health and all correspondence of the office appertaining to the business of the board. He shall, as far as possible, aid in obtaining contributions to the library and museum of the board. He shall prepare blank forms of returns, and such instructions as may be necessary, and forward them to the local boards of health throughout the state. He shall collect information concerning vital statistics, knowledge respecting diseases, and all useful information on the subject of hygiene, and through an annual report, and otherwise, as the board may direct, shall disseminate such information among the people. R. S. c. 18, § 4.

The secretary shall receive an annual salary which shall be fixed by the state board of health. The board shall quarterly certify the amount due him, and on presentation of said certificate the governor shall draw his warrant on the treasurer of state for the amount. The members of the board shall receive no compensation for their services, but their traveling and other necessary expenses while employed on the business of the board shall be allowed and paid. R. S. c. 18, § 5.

The sum of fifty-five hundred dollars shall be annually appropriated to pay the salary of the secretary, meet the contingent expenses of the office of the secretary and the expenses of the board, which shall not exceed the sum hereby appropriated. Said expenses shall be certified and paid in the same manner as the salary of the secretary. R. S. c. 18, § 6, as amended by P. L. 1909 c. 48, § 1.

In order to afford to this board, better advantages for obtaining knowledge important to be incorporated with that collected through special investigations and from other sources, all officers

of the state, the physicians of all incorporated companies, and the president or agent of any company chartered, organized, or transacting business under the laws of this state, as far as practicable, shall furnish to the state board of health any information bearing upon public health which may be requested by said board for the purpose of enabling it better to perform its duties of collecting and distributing useful knowledge on this subject. R. S. c. 18, § 7.

The secretary of the state board of health shall be the registrar of vital statistics for the state, and shall furnish to clergymen, and others authorized to marry, to sextons, to physicians, town clerks, clerks of the society of Friends, and clerks of courts, a copy of the provisions of this chapter relating to the registration of vital statistics, and suitable blanks for recording births, marriages, deaths and divorces, so printed, with appropriate headings, as readily to show the following facts and such others as may be deemed necessary to secure an accurate registration.

First. The record of birth shall state its date and place of occurrence, full christian and surname, if named, color and sex of child, whether living or stillborn, and the full christian and surnames, color, occupation, residence and birthplace of parents.

Second. The record of marriage shall state its date and place of occurrence, the name, residence, and official character of the person by whom solemnized, the full christian and surnames of the parties, the age, color, birthplace, occupation and residence of each, the condition, whether single or widowed, whether first, second or other marriage; and the full christian and surnames, residence, color, occupation and birthplace of their parents.

Third. The record of death shall state its date, the full christian and surname of the deceased, the sex, color, condition, whether single or married, age, occupation, place of birth, place of death, the full christian and surnames and birthplaces of parents, and the disease or other cause of death, so far as known. R. S. c. 61, § 18.

(NOTE: For power of state board of health to fill vacancies in local board of health in certain cases, see section one hundred and twelve, under heading "Local Board of Health," post. Two members of state board of health shall be an examining board for undertakers and keep list of embalmers. R. S. c. 18, § 15. Enforcement of vaccination in paper mills, see section one hun-

dred and fifty-one, under heading "To Provide against the Danger of Small-pox from Paper Mills," post.)

The state board of health may establish and equip with the proper and necessary apparatus, instruments and supplies a state laboratory of hygiene, for the chemical and bacteriological examination of water supplies, milk and food products, and the examination of cases and suspected cases of diphtheria, typhoid fever, tuberculosis, glanders and other infectious and contagious diseases. R. S. c. 10, § 21.

The state board of health shall appoint a director of such laboratory, who shall hold that position at the pleasure of the board. He shall keep a record of all specimens sent to him for examination, and examine these specimens without unnecessary delay, and do such other work, and make such other investigations relating to the public health as said board may from time to time direct. He shall annually in the month of January make a full report to the board of all matters pertaining to the laboratory, and shall make such other and special report as the board may require. The kind and amount of the work he shall do and the compensation therefor shall be fixed by said board. The services of the laboratory and all investigations therein made shall be free to the people of the state. R. S. c. 18, § 22.

The sum of four thousand five hundred dollars a year is hereby appropriated to pay for the services of the director, and of such assistants as may be necessary, to procure the necessary supplies, and to meet the other necessary expenses of said laboratory, which sum shall be expended under the supervision of the state board of health. R. S. c. 18, § 23, as amended by P. L. 1907 c. 26.

There shall be a local board of health in each city and town in the state, to be composed of three members appointed by the municipal officers, anything in the charter of such city to the contrary notwithstanding; the board first appointed in any town shall be appointed to serve, one for three years, one for two years, and one for one year, and thereafterwards the municipal officers in each town shall annually before the fifteenth day of April, appoint a member of such board to serve three years, and to hold office until another is appointed in his stead. Any vacancy arising from any cause, shall be filled for the unexpired term at the first meeting thereafter, of the municipal officers. If, for any reason, the appointments are not made at said dates,

the same shall be made as soon as may be thereafter. R. S. c. 18, § 24.

If the municipal officers of any city or town shall fail to appoint a local board of health, or to fill any vacancy in said board, in accordance with the provisions of the preceding section, the secretary of the state board of health may in writing request such municipal officers to make such appointment, and if the municipal officers shall neglect or refuse to do so for a period of thirty days after receiving such written request, the state board of health may appoint such local board of health, or fill any vacancy therein. R. S. c. 18, § 25.

Before the fifteenth day of May in each year, the board of health shall meet for the transaction of business, and shall choose a chairman and secretary from their number. R. S. c. 18, § 26.

The chairman shall preside at all meetings of the board. The secretary shall, in a book kept for that purpose, make and keep a record of all the proceedings at the meetings and of all transactions, doings, orders and regulations of the board of health. The secretary shall be also the executive officer of the board when a health officer is not appointed. R. S. c. 18, § 27.

The municipal officers may appoint a health officer, who shall be a well educated physician, who shall be the sanitary adviser and executive officer of the board, and who shall hold office during the pleasure of the board. The municipal officers shall establish his salary or other compensation, and shall regulate and audit all fees and charges of persons employed by each board of health, in the execution of the health laws and of their regulations. R. S. c. 18, § 28; 97 Me. 95.

The health officer, or where there is no health officer appointed, the secretary of each local board of health, at least once in each year, shall report to the state board of health their proceedings, and such other facts required, on blanks, and in accordance with instructions received from said board. He shall also make special reports whenever required to do so, by the state board of health. He shall, within one week following their meeting and election of officers, report to the secretary of the state board of health, the name and address of each member of the local board, of the chairman and secretary, and of the health officer when one is appointed. R. S. c. 18, § 29.

Each local board of health constituted under section twenty-four shall:

First. Hold regular quarterly meetings, and special meetings whenever considered necessary by its executive officer, also whenever requested by the state board of health, or by the president and secretary thereof.

Second. Prescribe the powers and duties of the local health officer, when there is one, and direct him, from time to time in the performance of his duties.

Third. Guard against the introduction of contagious and infectious diseases, by the exercise of proper and vigilant medical inspection and control of all persons and things coming within the limits of its jurisdiction from infected places, or which for any cause, are liable to communicate contagion; to give public notice of infected places, by displaying red flags or by posting placards on the entrances of the premises; require the isolation of all persons and things that are infected with, or have been exposed to, contagious or infectious diseases, and provide suitable places for the reception of the same; and furnish medical treatment and care for persons, sick with such diseases who cannot otherwise be provided for; prohibit and prevent all intercourse and communication with, or use of, infected premises, places and things, and require, and if necessary provide, the means for the thorough cleansing and disinfection of the same before general intercourse therewith, or use thereof, shall be allowed. And it shall report to the state board of health promptly, facts which relate to infectious and epidemic diseases, and every case of small-pox, varioloid, diphtheria and scarlet fever, typhoid fever, cerebro-spinal meningitis, measles, membranous croup, so called, whooping cough and pulmonary tuberculosis or consumption as it is commonly termed, occurring within the limits of its jurisdiction, and such notification shall be in accordance with the requirements of the blanks furnished by the said state board.

Fourth. Receive and examine into the nature of complaints made by any of the inhabitants, concerning nuisances dangerous to life and health within the limits of its jurisdiction; enter upon or within any place or premises where nuisances or conditions dangerous to life and health are known or believed to exist, and personally, or by appointed agents, inspect and examine the same; and all owners, agents and occupants, shall permit such sanitary examinations; and every such board of health shall order the suppression and removal of nuisances and conditions detrimental to life and health found to exist within the limits of its jurisdiction.

Fifth. Make, alter and amend such orders and by-laws as they shall think necessary and proper for the preservation of life and health and the successful operation of the health laws of the state, subject to the approval of any justice of the supreme judicial court. Notice shall be given by the board of health of all by-laws made or amended by them, by publishing the same in some newspaper, if there is one published in such town; if there is none, then in the nearest newspaper published in the county; or by posting copies of said by-laws in six conspicuous and public places within the town; and a record of such publication or posting of said orders and by-laws in the office of the town clerk, shall be deemed legal notice to all persons. R. S. c. 18, § 30, as amended by P. L. 1909 c. 130.

Where any local board of health is of opinion that the cleansing and disinfecting of any house, building, car, vessel or vehicle, or any part thereof, and of any article therein likely to contain infection, would tend to prevent or check infectious disease, such local board of health shall give notice in writing to the owner, agent or occupier of such house, building, car, vessel or vehicle, or part thereof, requiring him to cleanse and disinfect to the satisfaction of the health officer, or board of health, such house, building, car, vessel or vehicle, and said articles within a time specified in such notice. R. S. c. 18, § 31.

If the person to whom notice is given, fails to comply therewith, he shall be liable to a penalty of not less than five, nor more than ten dollars, for every day during which he continues to make default; and the local board of health shall cause such house, building, car, vessel or vehicle, or any part thereof, and articles, to be cleansed and disinfected at the expense of the town, and the town may recover the expenses so incurred from the owner, agent or occupier in default, by an action of special assumpsit. R. S. c. 18, § 32.

Whenever any householder knows or has reason to believe that any person within his family or household has small-pox, diphtheria, scarlet fever, cholera, typhus or typhoid fever, cerebro-spinal meningitis, measles, membranous croup, so called, or whooping cough, he shall within twenty-four hours give notice thereof to the health officer of the town in which he resides, and such notice shall be given either at the office of the health officer, or by a communication addressed to him and duly mailed within the time above specified, and in case there is no health officer, to the secretary of the local board of health, either at his office or

by communication as aforesaid. R. S. c. 18, § 33, as amended by P. L. 1909 c. 33.

No householder in whose dwelling there occurs any of the above mentioned diseases, shall permit any person suffering from any such disease, or any clothing or other property to be removed from his house, without the consent of the board, or of the health officer, and the said board or health officer, shall prescribe the conditions of removal. R. S. c. 18, § 34.

No parent, guardian, or other person, shall carelessly carry about children or others affected with infectious diseases, or knowingly or willfully introduce infectious persons into other persons' houses, or permit such children under his care, to attend any school, theatre, church or any public place. R. S. c. 18, § 35.

Whenever any physician knows or has reason to believe that any person whom he is called upon to visit, is infected with any of the diseases mentioned in section thirty-three, such physician shall within twenty-four hours, give notice thereof to the secretary of the local board of health, or the health officer of the town in which such person lives. R. S. c. 18, § 36, as amended by P. L. 1909 c. 78.

The secretary or health officer of each local board of health in the state, who shall have knowledge of any violation of the provisions of the preceding section occurring within the jurisdiction of such local board of health, shall forthwith give notice thereof in writing and of all facts within his knowledge in relation thereto, to the county attorney of the county in which such violation has occurred and said county attorney shall thereupon examine into the case and take such action in the matter as the circumstances of the case require. R. S. c. 18, § 37.

No person affected with small-pox, scarlet fever, diphtheria or cholera, and no person having access to any person affected with any of the said diseases, shall mingle with the general public until such sanitary precautions as may be prescribed by the local board shall have been complied with. R. S. c. 18, § 38.

Persons recovering from small-pox, scarlet fever, diphtheria or cholera, and nurses who have been in attendance on any person suffering from any such disease, shall not leave the premises until they have received from the board of health or health officer, a certificate that they have taken such precautions as to their persons, clothing and all other things which they propose bringing from the premises as are necessary to insure the immu-

nity from infection of other persons with whom they may come in contact, and no such person shall expose himself in any public place, shop, street, inn or public conveyance without having first adopted such precautions. R. S. c. 18, § 39.

Nurses and other attendants upon persons sick with small-pox, scarlet fever, diphtheria, or cholera, shall adopt for the disinfection and disposal of excreta, and for the disinfection of utensils, bedding, clothing and other things which have been exposed to infection, such measures as may be ordered in writing, by the local board of health. R. S. c. 18, § 40.

No person shall give, lend, transmit, sell or expose any bedding, clothing, furniture or other article which has been used by persons affected with small-pox, scarlet fever, diphtheria, measles, cholera, plague or pulmonary tuberculosis or consumption, or from rooms which have been occupied by such persons, without first having said articles disinfected to the satisfaction of the local board of health. R. S. c. 18, § 41.

Any local board of health may direct the destruction of any bedding, clothing, or other articles, which have been exposed to infection. R. S. c. 18, § 42.

Whenever small-pox, diphtheria, scarlet fever or other contagious disease, shall appear in a town, the local board of health shall immediately notify the teachers of the public schools in the neighborhood, of the fact, and all teachers and school officers when thus notified, or when otherwise they shall know or have good reason to believe that any such disease exists in any house in the neighborhood, shall exclude from the schoolhouse, all children and other persons living in such infected houses or who have called or visited at such houses, until such time as the local board of health shall certify that such children or other persons may safely be readmitted. R. S. c. 18, § 43.

When persons from houses or places which are infected with any of the diseases specified in the preceding section, have entered any schoolroom, or when, from any other cause, the schoolroom has probably become infected, the teacher shall dismiss the school, and notify the school officers and local board of health, and no school shall be again held in such schoolroom until the room has been disinfected to the satisfaction of the local board of health, and the school officers and board of health shall cause the room to be disinfected as soon as possible. R. S. c. 18, § 44.

The board, when satisfied upon due examination, that a cellar,

room, tenement or building in its town, occupied as a dwelling place, has become, by reason of want of cleanliness, or other cause, unfit for such purpose, and a cause of sickness to the occupants, or the public, may issue a notice in writing to such occupants, or to the owner or his agent, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owner, or may close up the premises, and the same shall not be again occupied as a dwelling-place, until put in a proper sanitary condition. If the owner thereafter occupies or knowingly permits the same to be occupied, without putting the same in a proper sanitary condition, he shall forfeit not less than ten, nor more than fifty dollars. R. S. c. 18, § 45.

No person having small-pox, diphtheria, scarlet fever, cholera, or other disease dangerous to public health, shall enter, nor shall any person allow any one under his charge who has any such disease, to enter any conveyance without having previously notified the owner or person in charge of such conveyance, of the fact of his having such disease. R. S. c. 18, § 46.

The owner or person in charge of any such conveyance shall not, after the entry of any person so infected into his conveyance, allow any other person to enter it, without having sufficiently disinfected it under the direction of the local board of health, or the supervision of the health officer. R. S. c. 18, § 47.

No person shall let or hire any house or room in a house in which small-pox, diphtheria, scarlet fever, cholera, pulmonary tuberculosis or consumption or typhoid fever has existed, without having caused the house and the premises used in connection therewith, to be disinfected to the satisfaction of the local board of health. R. S. c. 18, § 48.

Any member of a local board of health, or any health officer or other person employed by the local board of health may, when obstructed in the performance of his duty, call to his assistance, any constable or other person he thinks fit, and every such constable or person so called upon shall render assistance. R. S. c. 18, § 49.

Whoever willfully violates any provision of the seventeen preceding sections, or of said regulations and by-laws or neglects or

refuses to obey any order or direction of any local board of health or health officer authorized by said provisions the penalty for which is not herein specifically provided, or willfully interferes with any person or thing, to prevent the execution of the provisions of said sections or of said regulations and by-laws, shall be punished by a fine of not more than fifty dollars; judges of municipal and police courts and trial justices, shall have jurisdiction original and concurrent with the supreme judicial and superior courts, of all offenses under said sections. R. S. c. 18, § 50.

No body of a deceased person whose death was caused by cholera, yellow fever, diphtheria, scarlet fever, typhus fever, typhoid fever, small-pox or other pestilential disease, shall be removed from place to place in this state by any railroad, steamboat or other common carrier, unless there shall be attached to the outer case in which said body is enclosed, a certificate from the board of health where such person died, stating the disease causing such death, and that necessary precautions against infection satisfactory to said board have been observed. A certificate of death giving heart failure as the only cause of death shall not be deemed sufficient upon which to issue a burial permit, and such certificate must be returned to the physician who made it for the proper correction and definition. If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit, then the person or persons in charge of it shall apply for a burial permit to the clerk of the town in which it is to be buried, and the clerk of the town shall issue such permit when furnished with satisfactory information. R. S. c. 61, § 24.

The board of health of each city, village, town and plantation, shall annually, on the first day of March, or oftener if they may deem it prudent, provide for the free vaccination with the cow-pox, of all the inhabitants over two years of age within their respective localities, to be done under the care of skilled practicing physicians, and under such circumstances and restrictions as said authorities adopt therefor. R. S. c. 18, § 82.

To provide for the control of diphtheria and other contagious diseases, local boards of health shall furnish antitoxin free to all

indigent persons suffering from such diseases, in such manner as the state board of health may direct. P. L. 1909 c. 55, § 1.

The state board of health is instructed and directed to make contracts with reputable manufacturers for the sale of antitoxin to the local boards of health in such manner as is deemed best and most economical for the several towns, and said state board may arrange several towns and plantations into groups for the purchase of antitoxin when it appears that such arrangement would be the best, most convenient and most economical for them. P. L. 1909 c. 55, § 2.

The antitoxin shall be kept by the secretary or chairman of the local board, and shall be furnished physicians upon application on blanks provided and furnished by the state board. P. L. 1909 c. 55, § 3.

The local board shall provide a repository for antitoxin which may be furnished to any physician at the same rates as furnished by the state board of health and to their patients on prescriptions. The local board of health in any town furnishing an indigent residing in another town antitoxin upon application, as above provided, shall be reimbursed by the town where the patient resides. The state shall reimburse cities or towns furnishing antitoxin to any person having no legal residence in any city or town within the state. P. L. 1909 c. 55, § 4.

Whenever any person or family is placed in quarantine by a board of health, to protect the public against small-pox, scarlet fever, diphtheria, or any other dangerous or contagious disease, it shall be the duty of said board to assist such person or family, if indigent or in a needy condition while in quarantine, in such a manner as in the judgment of the board may be deemed wise and necessary. P. L. 1909 c. 25, § 1.

All expenses including all supplies of food and medicine including antitoxin incurred in carrying out the provisions of section one of this act, or incurred in furnishing families or persons affected with tuberculosis with burnable spit-cups, or other supplies needed to prevent the spread of infection, or such part thereof as the board may determine, shall be deemed a legitimate expenditure for the protection of the public health and shall be charged to the account of incidental expenses of the town, but not to any pauper account, nor shall any person so quarantined and assisted be considered a pauper or be subject to disfranchisement for that cause unless such persons are already paupers as defined by the revised statutes. P. L. 1909 c. 25, § 2.

(NOTE: For duty of local board of health in case of notification or suspicion of glanders or contagious disease in domestic animals, see section two, on page 582.

No owner, agent or superintendent of any paper mill where domestic or foreign rags are used in the manufacturing of paper shall hire or admit any person to work in or about said mill who has not been successfully vaccinated or re-vaccinated within two years, or to the satisfaction of the local board of health. R. S. c. 18, § 83.

No person shall work in or about any paper mill where rags are used, who has not been successfully vaccinated or re-vaccinated within two years, or to the satisfaction of the local board of health. R. S. c. 18, § 84.

The owner, agent and superintendent in every paper mill where rags are used shall every year, in the months of February and September, make out and deliver to the local board of health, a list containing the names, ages, kind of work, and places of residence of all persons employed in or about said mill. R. S. c. 18, § 85.

In the months of March and October, annually, each and every person who is employed in a paper mill, shall be examined by the local board of health as to whether he or she is successfully and sufficiently protected by vaccination, and the local board of health shall in all cases be the judges of the sufficiency of the protection by vaccination. R. S. c. 18, § 86.

Whoever violates any provision of the four preceding sections shall be punished by a fine of not more than fifty dollars. R. S. c. 18, § 87.

The local boards of health within their respective jurisdictions, and the state board of health, shall enforce sections eighty-three to eighty-seven each inclusive as far as comes within their power, and when said state board of health knows or has reason to believe that any penalty or forfeiture has been incurred by reason of neglect to comply with said sections, it shall give notice thereof, in writing, to the county attorney of the county in which said penalty or forfeiture has occurred, and upon receipt of such notice the county attorney shall prosecute the defaulting person or persons. R. S. c. 18, § 88.

If one or both eyes of an infant become reddened or inflamed at any time within four weeks after birth, the midwife, nurse or

person having charge of said infant shall report the condition of the eyes at once to some legally qualified practitioner of medicine of the city, town or district in which the parents of the infant reside. Any failure to comply with the provision of this section shall be punishable by a fine not to exceed one hundred dollars, or imprisonment not to exceed six months. R. S. c. 18, § 90.

The more effectually to protect the public health the state board of health may establish such systems of inspection as in its judgment may be necessary to ascertain the actual or threatened presence of the infection of Asiatic cholera, small-pox, diphtheria, scarlet fever, plague or typhus fever; and any duly authorized agent or inspector of said board may enter any building, vessel, railway car or other public vehicle, to inspect the same and to remove therefrom any person affected by said diseases; and for this purpose he may require the person in charge of any vessel or public vehicle other than a railway car to stop such vessel or vehicle at any place, and he may require the conductor of any railway train to stop his train at any station or upon any side track, and there detain it for a reasonable time; *provided*, that no conductor shall be required to stop his train when telegraphic communication with the dispatcher's office cannot be obtained or at such times or under such circumstances as may endanger the safety of the train and passengers; and *provided further*, that any such agent or inspector may cause any car which he may think may be infected with any of said diseases to be side tracked at any suitable place and there be cleansed, fumigated and disinfected. And the said board of health may from time to time make, alter, modify or revoke rules and regulations for guarding against the introduction of any infectious or contagious diseases into the state, including rabies, or hydrophobia of animals and man; for the control and suppression thereof if within the state; for the quarantine and disinfection of persons, localities, and things infected or suspected of being infected by such diseases; for the transportation of dead bodies when death results from any infectious or contagious disease; for the speedy and private interment of the bodies of persons who have died from said diseases; and, in emergency, for providing those sick with said diseases with necessary medical aid and with temporary hospitals for their accommodation and for the accommodation of their nurses and attendants. And the said board may declare any and all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole state, or

within any specified part thereof, and to apply to any person or persons, family, camp, building, vessel, railway car, or public vehicle of any kind. R. S. c. 18, § 8, as amended by P. L. 1909 c. 48.

Any rules and regulations adopted by the state board of health in the premises shall be immediately submitted by it to the governor and council and unless approved in writing by the governor and council within thirty days after such submission, such rules and regulations shall thereafter become ineffective. Should the governor and council disapprove any rules and regulations so submitted to them within the thirty days and so notify the secretary of the board of health in writing, the rules and regulations, so disapproved shall upon such notification immediately become ineffective and void. Such rules and regulations, if of general application, shall be published in the state paper; but whenever in the judgment of the board it shall be necessary to do so, special rules and regulations, or orders relating to said diseases may be made for any town, village or city without such publication, and the service of copies of such rules, regulations or orders upon such town, village or city through the officers thereof shall be a sufficient notice thereto; and the rules, regulations or orders of the state board of health made in accordance with the provisions of this section, shall, for the time being and until the same are revoked, supersede all local rules, regulations, by-laws or ordinances that may be inconsistent or in conflict therewith. R. S. c. 18, § 9.

All health officers, local boards of health, municipal officers, sheriffs, constables, police officers, and marshals shall enforce the rules and regulations of the state board of health made as provided in preceding sections in every particular affecting their respective localities and duties; and any person who shall neglect or refuse to obey the said rules and regulations, or who shall willfully obstruct or hinder the execution thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both fine and imprisonment. And all authorities of every county, city, town and village corporation, all local boards of health, and of all officers and persons in charge of the institution, buildings and vehicles mentioned in section eight shall coöperate with the state board of health in carrying out the provisions of this section and the two preceding sections; and in case such coöperation be refused, withheld or neglected, the said board may execute its orders and directions by agents

of its own appointment; and all expenses incurred by members of the state board of health or by duly appointed agents of said board under the provisions of this section shall be paid by the state, the bills first being approved by the governor and council. R. S. c. 18, § 10.

For the purpose of facilitating and encouraging the live stock interests of the state and for extirpating all insidious, infectious and contagious disease among cattle, horses and sheep, and especially tuberculosis, the governor shall appoint a board of cattle commissioners consisting of three persons of known executive ability, who shall be charged with the execution of the provisions of the ten following sections, shall be known and designated as the State of Maine Cattle Commission, and shall hold office during the pleasure of the governor. The compensation of said commissioners shall be at the rate of five dollars per day during the time they are actually engaged in the discharge of their duties as commissioners and actual traveling expenses. The said commissioners shall elect one of their number as president. R. S. c. 19, § 1, as amended by P. L. 1905 c. 65.

The said commissioners shall cause investigation to be made as to the existence of tuberculosis, pleuro-pneumonia, foot and mouth disease, and any other infectious or contagious diseases. They or their duly constituted agent may enter any premises or places, including stock yards, cars and vessels, within any county or part of the state in or at which they have reason to believe there exists any such diseases, and make search, investigation and inquiry, in regard to the existence thereof. Upon the discovery of the existence of any of the said diseases, the said commissioners may give notice, by publication, of the existence of such disease, and the locality thereof, in such newspapers as they may select, and may notify in writing, the officials or agents of any railroad, steamboat, or any other transportation company, doing business in or through such infected locality, of the existence of such disease; and they shall establish and maintain such quarantine of animals, places, premises or localities, as they may deem necessary to prevent the spread of any such disease, shall cause the appraisal of the animal or animals affected with the said disease, in accordance with such rules and regulations by them adopted as hereinafter authorized and provided, shall cause the same to be destroyed, and shall pay the owner or owners thereof one-half of their value, as determined upon the basis of health before infection, out of any moneys appropriated by the legislature for that purpose; *provided, however*, that no appraised

value shall be more than one hundred dollars for an animal with pedigree recorded or recordable in the recognized herd books of the breed in which the animal destroyed may belong, nor more than fifty dollars for an animal which has no recordable pedigree; *provided, further*, that in no case shall compensation be allowed for an animal destroyed under the provisions of this section, which may have contracted or been exposed to such disease in a foreign country, or on the high seas, or that may have been brought into this state within three years previous to such animal's showing evidence of such disease; and the owner or owners shall furnish satisfactory evidence as to the time such animal or animals shall have been owned in the state; nor shall compensation be allowed to any owner who in person, or by agent, knowingly and willfully conceals the existence of such disease, or the fact of exposure thereto in animals of which the person making such concealment by himself or agent, is in whole or part owner. R. S. c. 19, § 2.

The said commissioners shall make, record and publish rules and regulations providing for and regulating the agencies, methods and manner of conducting, and the investigations aforesaid, regarding the existence of said contagious diseases; for ascertaining, entering and searching places where such diseased animals are supposed to exist; for ascertaining what animals are so diseased, or have been exposed to contagious diseases; for making, reporting and recording descriptions of the said animals so diseased or exposed and destroyed, and for appraising the same, and for making payment therefor; and to make all other needful rules and regulations which may, in the judgment of the commissioners be deemed requisite to the full and due execution of the provisions of sections one to eleven each inclusive. All such rules and regulations, before they shall become operative, shall be approved by the governor, and thereafter published in such manner as may be provided for in such regulations; and after such publication such rules and regulations shall have the force and effect of law, so far as the same are not inconsistent with the laws of the state or United States. R. S. c. 19, § 3.

Whoever knowingly and willfully refuses permission to said commissioners, or either of them or their duly constituted agent to make, or who knowingly and willfully obstructs said commissioners, or either of them, or their duly constituted agent in making all necessary examinations of, and as to animals supposed by said commissioners to be diseased as aforesaid, or in destroying the same, or knowingly attempts to prevent said commissioners,

or either of them, or their duly constituted agent from entering upon the premises and other places hereinbefore specified where any of said diseases are by said commissioners supposed to exist, shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding ninety days, or by both fine and imprisonment. R. S. c. 19, § 4.

Any person who is the owner of, or who is possessed of any interest in any animals affected with any of the diseases named in section two, or any person who is agent, common carrier, consignee, or otherwise is charged with any duty in regard to any animal so diseased, or exposed to the contagion of such disease, or any officer or agent charged with any duties under the provisions of sections one to eleven each inclusive, who shall knowingly conceal the existence of such contagious disease, or the fact of such exposure to such contagion, and who shall knowingly and willfully fail, within a reasonable time, to report to the said commissioners his knowledge or information in regard to the existence and location of said disease, or of such exposure thereto, shall be punishable as provided in section four. R. S. c. 19, § 5.

When the owner of animals adjudged under the provisions hereof, by the proper authority, to be diseased, or to have been exposed to contagion, refuses to accept the sum authorized to be paid under the appraisement provided for in section two, the commissioners shall declare and maintain a rigid quarantine as to the animals adjudged, as aforesaid, to be diseased or to have been exposed to any contagious or infectious disease, and of the premises or places where said cattle may be found, according to the rules and regulations prescribed by said commissioners, approved by the governor, and published, as provided in section three. R. S. c. 19, § 6.

No person or persons owning or operating any railroad, nor the owner or owners, or masters, of any steam, sailing, or other vessels, within the state, shall receive for transportation, or transport from one part of the state to another part of the state, or bring from any other state or foreign country any animals affected with any of the diseases named in section two, or that have been exposed to such diseases, especially the disease known as tuberculosis, knowing such animals to be affected, or to have been so exposed; nor shall any person or persons, company or corporation, deliver for such transportation to any railroad company, or to the master or owner of any vessel, any animals, knowing them to be affected with, or to have been exposed to, any of said dis-

eases; nor shall any person or persons, company or corporation, drive on foot, or transport in private conveyance, from one part of the state to another part of the state, any animal, knowing the same to be affected with, or to have been exposed to, any of said diseases. Whoever violates the provisions of this section shall be punished by fine not exceeding two hundred dollars, or by imprisonment not exceeding six months, or by both fine and imprisonment. R. S. c. 19, § 7.

The several county attorneys shall prosecute all violations of the four preceding sections, which shall be brought to their notice or knowledge by any person making the complaint under oath; and the same shall be heard in the supreme judicial court in the county in which such violation has been committed. R. S. c. 19, § 8.

The said commissioners may appoint or elect one of their number as secretary of said board, who shall receive a reasonable compensation for his services during the time in which, under the provisions hereof, the services of the said commissioners shall be required. They shall make and preserve a full record of all rules and regulations promulgated under the provisions of section three, of all payments and expenses hereunder incurred, and all other transactions performed by them in the discharge of their duties as herein provided; and they shall, on or before the first Wednesday in January of each year, during their continuance in service, and at other times as they may deem conducive to the public interests, or as they may be required by the governor, report to said governor full and accurate accounts of their expenditures, and other proceedings under the provisions of this chapter, and of the condition of said diseases, if any, in the state, to be communicated by him to the legislature. Whenever the functions of said commission shall be suspended or terminated, it shall turn over to the secretary of state all its books, papers and other effects, taking his receipt therefor, and he shall remain the custodian of the same until such time as the functions of said commission may be restored. R. S. c. 19, § 9.

The commissioners may employ skilled veterinarians, and such other agents and employés as they may deem necessary to carry into effect the provisions of the nine preceding sections, and may fix the compensation of the person or persons so employed, and may terminate such employment at their discretion; and they may out of the moneys appropriated for carrying into effect said sections make such expenditures as may be needed for the actual

and necessary traveling expenses of themselves and their said employés, stationery, expenses of disinfecting premises, cars and other places, destroying diseased and exposed animals, and paying for the same, and such other expenses and expenditures as they may find to be actually necessary to properly carry into effect the provisions of said sections. R. S. c. 19, § 10.

The moneys so appropriated shall be paid over to the secretary of said commission, from time to time, as the same may be found to be needed, upon requisition made by the said commissioners and shall be disbursed by the said secretary of said commission only upon vouchers approved by said commission or a majority of them. The said secretary shall before entering upon the duties of his office, take an oath to faithfully discharge the duties thereof, and shall enter into a bond to the state, with sureties to be approved by the treasurer of state, in such sum as he may designate, for the faithful accounting of all moneys received by the said secretary of the commission, under the provisions hereof. R. S. c. 19, § 11.

The state cattle commissioners and all other persons having in charge the killing of any diseased cattle, sheep or any other diseased domestic animals, as soon as such animal is killed, shall inject, or cause to be injected into the carotid artery of each animal so killed, kerosene oil in sufficient quantity to thoroughly penetrate and permeate the entire fleshy part of the carcass of each such animal killed as aforesaid. R. S. c. 19, § 12.

Every carcass treated as provided in the preceding section, shall within twenty-four hours thereafter be buried to a depth of at least four feet, or within forty-eight hours thereafter be reduced by the process of manufacturing the same for fertilizers. R. S. c. 19, § 13.

Whoever violates any provision of the two preceding sections shall be fined not exceeding one hundred dollars for each offense or imprisoned for a period not exceeding ninety days. R. S. c. 19, § 14.

The owner or other person having charge of any animal, or meat or milk of any animal affected with tuberculosis or other contagious or infectious disease, who, knowing that the animal is thus affected, shall hold the animal, or its meat or milk, for human food, shall be punished by a fine of not less than five, nor more than fifty dollars. R. S. c. 129, § 2.

CHAPTER LXV.

TOWN HOSPITALS.

A town may establish therein one or more hospitals for the reception of persons having the small-pox or other disease dangerous to the public health; or its local board of health may license any building therein as a hospital, which shall be under the control of said board; but no such hospital shall be within one hundred rods of an inhabited dwelling-house in an adjoining town without the consent of its local board of health. R. S. c. 18, § 75.

Whoever inoculates himself or any other person, or suffers himself to be inoculated with the small-pox, unless at some lawful hospital, forfeits not exceeding one hundred dollars for each offense. R. S. c. 18, § 76.

When a hospital is so established or licensed, the physicians, the persons inoculated or sick therein, the nurses, attendants, and all who come within its limits, and all furniture or other articles used or bought there, shall be subject to the regulations made by the local board of health. R. S. c. 18, § 77.

When small-pox or other disease dangerous to the public health breaks out in a town, the local board of health shall immediately provide such hospital or place of reception for the sick and infected, as they judge best for the accommodation and safety of the inhabitants; such hospitals and places are subject to their regulations the same as established hospitals; and they shall cause such sick and infected to be removed thereto, unless their condition will not permit it without imminent danger; in which case, the house or place where the sick are, shall be deemed a hospital for every purpose aforesaid; and all persons residing in, or in any way concerned with it, are subject to hospital regulations. R. S. c. 18, § 78.

When any disease dangerous to the public health exists in a town, the municipal officers shall use all possible care to prevent its spread and shall give public notice of infected places to

travelers, by displaying red flags at proper distances, and by all other means most effectual, in their judgment, for the common safety. R. S. c. 18, § 79.

If any physician or other person in such hospitals or places of reception, attending, approaching, or concerned therewith, violates any lawful regulation in relation thereto, with respect to himself or his or another's property, he forfeits not less than ten, nor more than one hundred dollars, for each offense. R. S. c. 18, § 80.

All forfeitures inure to the town where the offense is committed. R. S. c. 18, § 81.

CHAPTER LXVI.

NUISANCES.

All places used as houses of ill fame, or for the illegal sale or keeping of intoxicating liquors, or resorted to for lewdness or gambling; all houses, shops or places where intoxicating liquors are sold for tippling purposes, and all places of resort where intoxicating liquors are kept, sold, given away, drank or dispensed in any manner not provided for by law, are common nuisances. The supreme judicial court shall have jurisdiction in equity, upon information filed by the county attorney or upon petition of not less than twenty legal voters of such town or city, setting forth any of the facts contained herein, to restrain, enjoin or abate the same, and an injunction for such purpose may be issued by said court or any justice thereof. R. S. c. 22, § 1.

Whoever keeps or maintains such nuisance, shall be fined not less than one hundred dollars and not exceeding one thousand dollars, and imprisonment in jail not less than thirty days and not more than one year, and in default of payment of said fine an additional imprisonment of thirty days in jail. R. S. c. 22, § 2.

If any tenant or occupant, under any lawful title, of any building or tenement not owned by him, uses it or any part thereof for any purpose named in section one, he forfeits his right thereto, and the owner thereof may make immediate entry,

without process of law, or may avail himself of the remedy provided in chapter ninety-six. R. S. c. 22, § 3.

Whoever knowingly lets any building or tenement owned by him, or under his control, for any purpose named in section one, or knowingly permits the same or part thereof to be so used, is guilty of aiding in the maintenance of a nuisance, and shall be fined not less than one hundred, nor more than one thousand dollars, or imprisoned not less than thirty days nor more than six months. R. S. c. 22, § 4.

The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture, which, by noxious exhalations, offensive smells or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or of the public; causing or suffering any offal, filth or noisome substance to collect, or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor or collection of water; corrupting or rendering unwholesome or impure, the water of a river, stream or pond; unlawfully diverting it from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings or otherwise, of highways, private ways, streets, alleys, commons, common landing places or burying grounds, are nuisances within the limitations and exceptions hereafter mentioned. R. S. c. 22, § 5.

Any fence or other structure in the nature of a fence, unnecessarily exceeding six feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance. R. S. c. 22, § 6.

The municipal officers of a town, when they judge it necessary, may assign places therein for the exercise of any trades, employments or manufactures aforesaid, and may forbid their exercise in other places, under penalty of being deemed public or common nuisances and the liability to be dealt with as such. All such assignments shall be entered in the records of the town, and may be revoked when said officers judge proper. R. S. c. 22, § 7.

When a place or building so assigned becomes a nuisance, offensive to the neighborhood, or injurious to the public health, any person may complain thereof to the supreme judicial court, and if after notice to the party complained of, the truth of the

complaint is admitted by default, or made to appear to a jury on trial, the court may revoke such assignment, and prohibit the further use of such place or building for such purposes, under a penalty not exceeding one hundred dollars for each month's continuance after such prohibition, to the use of said town; and may order it to be abated, and issue a warrant therefor, or stay it as hereafter provided; but if the jury acquit the defendant, he shall recover costs of the complainant. R. S. c. 22, § 8.

If any person manufactures gunpowder, or mixes or grinds the composition therefor, in any building within eighty rods of any valuable building not owned by such person or his lessor, which was erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly. R. S. c. 22, § 9.

A town, at its annual meeting, may prohibit the burning of bricks, or the erecting of brick-kilns within such parts thereof as they deem for the safety of the citizens or their property. And if any person, by himself or others, violates such prohibition, the municipal officers shall cause said bricks or brick-kiln to be forthwith removed, at the expense of the owner thereof; and the offender forfeits not exceeding two hundred dollars to the town; and if said bricks or brick-kiln are not removed before conviction, the court may issue a warrant for the removal thereof, or stay it as hereinafter provided. R. S. c. 22, § 10.

The erection and maintenance of water mills and dams to raise water for working them upon or across streams not navigable as provided in chapter ninety-four, shall not be deemed a nuisance unless they become offensive to the neighborhood, or injurious to the public health, or unless they occasion injuries or annoyances of a kind not authorized by said chapter. Fences and buildings fronting on public ways, commons or lands appropriated to public use, shall not be deemed nuisances when erected for the times and in the manner provided in section ninety of chapter twenty-three, unless the owner of the same shall be estopped as therein provided from justifying his occupation within the limits of said way. R. S. c. 22, § 11.

Whoever erects, causes or continues a public or common nuisance, as herein described or at common law, where no other punishment is specially provided, may be fined not exceeding one hundred dollars; and the court with or without such fine may order such nuisance to be discontinued or abated, and issue a warrant therefor as hereinafter provided. R. S. c. 22, § 12.

Any person injured in his comfort, property or the enjoyment of his estate by a common and public, or a private nuisance, may maintain against the offender an action on the case for his damages, unless otherwise specially provided. R. S. c. 22, § 13.

When, on indictment, complaint or action, any person is adjudged guilty of a nuisance, the court, in addition to the fine imposed, if any, or to the judgment for damages and costs, for which a separate execution shall issue, may order the nuisance abated or removed at the expense of the defendant; and after inquiring into and estimating, as nearly as may be, the sum necessary to defray the expense thereof, the court may issue a warrant therefor substantially in the form following:

STATE OF MAINE.

——, ss.

To the sheriff of our county of ——, or either of his deputies,

GREETING.

Whereas, by the consideration of our honorable —— court, at a term begun and held at ——, within and for said county, upon indictment [*or complaint or action in favor of A. B., as the case may be*], C. D. of ——, etc., was adjudged guilty of erecting [*causing, or continuing*] a certain nuisance, being a building in ——, in said county [*or fence, or other thing, describing particularly the nuisance and the place*], which nuisance was ordered by said court to be abated and removed: We therefore command you forthwith to cause said nuisance to be abated and removed; also that you levy of the materials by you so removed, and of the goods, chattels and lands of said C. D., a sum sufficient to defray the expense of removing and abating the same, not to exceed —— dollars, [*the sum estimated by the court,*] together with your lawful fees, and thirty-three cents more for this writ. And, for want of such goods and estate to satisfy said sums, we command you to take the body of said C. D., and him commit unto our jail in ——, in said county, and there detain until he pays such sums or is legally discharged. And make return of this warrant, with your doings thereon, within thirty days.

Witness, A. B., Esq., at ——, this —— day of ——, in the year of our Lord 19—.

J. S., Clerk.

And when the conviction is upon an action before a trial justice, and no appeal is made, the justice, after estimating the sum necessary to defray the expense of removing or abating the nuisance, may issue a like warrant, making corresponding alterations in its form. R. S. c. 22, § 14.

Instead of issuing such warrant, the court or trial justice may order it to be stayed on motion of the defendant, and on his enter-

ing into recognizance in such sum and with such surety as the court or justice directs, in case of an indictment, to the state, or in case of a complaint or action, to the plaintiff, conditioned that the defendant will either discontinue said nuisance, or that within a time limited by the court and not exceeding six months, he will cause it to be abated and removed, as may be directed by the court: and on failing to perform such condition, the recognizance shall be deemed forfeited, and the court, or any justice thereof, in term time or in vacation, or said trial justice on being satisfied of such default, may forthwith issue the warrant and scire facias on the recognizance. R. S. c. 22, § 15.

The expense of abating a nuisance by virtue of a warrant shall be collected by the officer as damages and costs are collected on execution; except that the materials of buildings, fences or other things removed as a nuisance, may be first levied upon and sold by the officer, and the proceeds, if any remain after paying the expense of removal, shall be paid by him, on demand, to the defendant or the owner of such property; and if said proceeds are not sufficient to satisfy the expenses, the officer shall collect the residue as aforesaid. A person committed to jail on such warrant, may avail himself of the poor debtor's oath, as if he had been committed on execution. If said expense cannot be collected of the defendant, it shall be paid as costs in criminal prosecutions. R. S. c. 22, § 16.

Any court of record, before which an indictment, complaint, or action for a nuisance is pending, may, in any county, issue an injunction to stay or prevent such nuisance, and make such orders and decrees for enforcing or dissolving it, as justice and equity require. R. S. c. 22, § 17.

No stationary, gasoline or steam engine shall be erected in a town until the municipal officers have granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provision as to height of chimney or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license shall be granted on written application, recorded in the town records, and a certified copy of it furnished, without charge, to the applicant. R. S. c. 22, § 18.

When application is made for such license, said officers shall assign a time and place for its consideration, and give at least

fourteen days' public notice thereof, in such manner as they think proper, at the expense of the applicant. Any person aggrieved by the decision of the selectmen of towns, in granting or refusing such license, may appeal therefrom to the next term of the supreme judicial court held in said county, which court may appoint a committee of three disinterested persons, as is provided in relation to appeals from location of highways. Said committee shall be sworn and give fourteen days' notice of the time and place of their hearing to the parties interested, view the premises, hear the parties, and affirm, reverse or annul the decision of said selectmen, and their decision shall be final. Pending such appeal from granting such license, the supreme judicial court in equity may enjoin the erection of such building and engine. R. S. c. 22, § 19.

Any such engine erected without a license shall be deemed a common nuisance without other proof than its use. R. S. c. 22, § 20.

Said officers have the same authority to abate and remove an engine, erected without license, as is given to the local board of health or health officer in chapter eighteen. R. S. c. 22, § 21.

No person or corporation shall manufacture, sell, use or cause to be used, except as hereinafter provided, any steam boiler in the state unless it is provided with a fusible safety plug, made of lead for boilers carrying steam pressure above fifty pounds per square inch, and of tin for boilers carrying steam pressure of fifty pounds and less per square inch, and said safety plug shall be not less than one-half inch in diameter, and shall be placed in the roof of the fire box when a fire box is used, and in all cases shall be placed in the part of the boiler fully exposed to the action of the fire, and as near the surface line of the water as good judgment shall dictate, excepting in cases of upright tubular boilers, when the upper tube sheet is placed above the surface line of the water, which class of boilers shall be exempted from the provisions of this section. R. S. c. 22, § 22.

If any person without just and proper cause removes from the boiler the safety plug, or substitutes any material more capable of resisting the action of the fire, or if any person or corporation uses or causes to be used, for six consecutive days, or manufactures or sells a steam boiler of a class not exempted from the provisions of the preceding section, unprovided with such safety fusible plug, such offender shall be fined not exceeding one thousand dollars. R. S. c. 22, § 23.

Persons engaged in blasting lime-rock or other rocks, shall before each explosion give seasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of said explosion ; and no such explosion shall be made after sunset. R. S. c. 22, § 24.

Whoever violates the preceding section, forfeits to the prosecutor five dollars for each offense, to be recovered in an action of debt, and is liable for all damages caused by any explosion ; and if the persons engaged in blasting rocks are unable to pay, or after judgment and execution, avoid payment of the fine, damages and costs, by the poor debtor's oath, the owners of the quarry, in whose employment they were, are liable for the same. R. S. c. 22, § 25.

When the municipal officers of a town after personal notice in writing to the owner of any burnt, dilapidated or dangerous building, or by publication in a newspaper in the same county, if any, three weeks successively, otherwise in the state paper, and after a hearing of the matter, adjudge the same to be a nuisance or dangerous, they may make and record an order, prescribing what disposal shall be made thereof, and thereupon the town clerk shall deliver a copy of such order to a constable, who shall serve such owner, if a resident of the state, with an attested copy thereof, and make return of his doings thereon to said clerk forthwith. If the owner, or part owner, is unknown, or resides without the state, such notice shall be given by publication in the state paper, or in a paper published in the county, three weeks successively. R. S. c. 22, § 26.

If no application is made to a justice of the supreme judicial court, as is hereafter provided, the municipal officers of such town, shall cause said nuisance to be abated, removed or altered in compliance with their order, and all expenses thereof shall be repaid to the town within thirty days after demand, or may be recovered of such person by an action for money paid. R. S. c. 22, § 27.

Any owner aggrieved by such order, may apply to a justice of the supreme judicial court, in term time or vacation, who shall forthwith, after notice and hearing, affirm, annul or alter such order. If the court is not in session, the action shall be entered on the docket of the preceding term. R. S. c. 22, § 28.

If the court affirms such order, costs shall be recovered by the town. If it wholly annuls such order, costs shall be recovered

by the applicant, and if it alters it in part, the court may render such judgment as to costs as justice requires. R. S. c. 22, § 29.

The four preceding sections shall not be in force in any town unless adopted at a legal meeting thereof. R. S. c. 22, § 30.

Motor boats run or operated in any tidal or other waters within the state, without the use of proper and suitable mufflers or other devices to deaden sound, are common nuisances within the meaning of revised statutes, chapter twenty-two, section twelve; but the penalty for so running or operating the same shall not exceed twenty-five dollars for each offense. P. L. 1909 c. 64, § 1.

This act shall not apply to motor boats while entered and competing in boat races; *provided*, such races are held between the hours of nine o'clock in the forenoon and nine o'clock in the afternoon. P. L. 1909 c. 64, § 2.

Any muffling device approved by the United States inspectors having jurisdiction of the tidal waters of this state shall, in case of motor boats run or operated on such tidal waters, be deemed to be a compliance with this act. P. L. 1909 c. 64, § 3.

CHAPTER LXVII.

ENGINEMEN AND FIRES.

Any town, corporation or individuals providing fire engines, hose, ladders or other apparatus for the extinguishment of fires, or the preservation of life or property from destruction at fires, may by ordinances or by-laws, prescribe rules and regulations for the care and management thereof, for the employment and compensation of men, not exceeding sixty to each engine, whether enginemen or other persons, and for the appointment of officers to govern them when on duty and to take charge of such apparatus, and may prescribe their style, rank, powers and duties. R. S. c. 28, § 1.

The engineers, or other officers chosen by any town under any ordinance or by-law, shall in addition to the powers thereby conferred, exercise all the powers and duties of fire wards as pre-

scribed in this chapter, unless restricted by the ordinance or by-law under which they are chosen; and such towns are responsible for the acts of their said officers, as for the acts or orders of fire wards in similar cases; and such firemen and enginemen, so employed, have all the powers and privileges, and are subject to all the duties and liabilities of enginemen, as prescribed in this chapter. R. S. c. 28, § 2.

Such enginemen shall be excused from serving as jurors in any court, unless their towns otherwise decide; continue in office during the pleasure of the municipal officers; meet annually to elect such officers as are deemed necessary to give efficiency to their operation; establish such rules and regulations respecting their duty, as are approved by said municipal officers and not repugnant to law, and affix penalties to be recovered by their clerk, not exceeding six dollars for any one offense. R. S. c. 28, § 3.

Companies of enginemen shall meet once every month, and oftener if necessary, to examine the state of their engines and the appendages thereof; and by night or by day without delay, under the direction of the fire wards, they shall use their best endeavors to extinguish all fires in the town or in its immediate vicinity. R. S. c. 28, § 4.

On proof of negligence, the municipal officers may discharge any engineman or member of the company organized under special laws, and appoint some other person in his stead; and they may select from the enginemen any number for each engine in their town, who shall, under the direction of the fire wards, attend fires therein with axes, fire hooks, fire sails and ladders, and perform such further duty as said officers from time to time prescribe. R. S. c. 28, § 5.

Each town, at its annual meeting, may elect as many fire wards as it deems necessary; and each person so chosen shall be notified in three days, and shall enter his acceptance or refusal of the office, with the town clerk, within three days after such notice, on penalty of ten dollars, unless excused by the town; and if excused, the town shall elect another in his place. R. S. c. 28, § 6.

When a fire breaks out in any town, the fire wards shall immediately attend at the place with their badges of office; and when there, any three of them may direct any building to be pulled down or demolished, if they judge it necessary to prevent the spread of the fire; but in their absence the major part of

the municipal, or any two civil or military officers present, in the order in which they are named, have the same power. R. S. c. 28, § 7.

During the continuance of any fire, said fire wards or other officers may require assistance in extinguishing the fire and removing merchandise and furniture; appoint guards to secure the same and to aid in pulling down or demolishing buildings and suppressing disorder and tumult; and generally may direct all operations to prevent further destruction or damage; any person refusing to obey their orders forfeits ten dollars. R. S. c. 28, § 8.

The chief engineer, engineers, fire wards and other officers appointed for particular localities under special laws, have the same power as fire wards to pull down or demolish buildings in order to prevent the spreading of fires, and to do other things for the extinguishment thereof; and the town to which they belong is liable to pay such compensation for damages consequent upon their acts, as other towns are for similar damages; and the members of the fire department in such localities shall enjoy all the privileges, and be liable to all the duties of other firemen; but nothing herein shall be construed to control the manner of their election. R. S. c. 28, § 9.

If the pulling down or demolishing of any building, except that in which the fire originated, is the means of stopping the fire, or if the fire is stopped before it comes to the same, then the owner of such building is entitled to recover a reasonable compensation therefor from the town, in a special action on the case. R. S. c. 28, § 10.

Whoever steals, carries away or conceals any property not his own, at a fire, or exposed by reason thereof, and does not give notice of it to the owner or one of the fire wards, shall be deemed guilty of larceny and punished accordingly. R. S. c. 28, § 11.

CHAPTER LXVIII.

PREVENTION OF FIRES.

No person shall occupy any tenement in a maritime town for sail making, rigging or as a livery stable, except where the municipal officers direct; whoever violates this section, forfeits ten dollars a month during the continuance of such occupancy. R. S. c. 28, § 12.

On complaint of any citizen that a chimney, stove, stove pipe, oven, furnace, boiler or appurtenance is defective, out of repair, or so placed in any building as to endanger it or any other building, the municipal officers of any town of not more than two thousand inhabitants, if satisfied that such complaint is well founded, shall give written notice to the owner or occupant of such building, and if he unnecessarily neglects for three days to remove or repair the same effectually, he forfeits not less than ten, nor more than one hundred dollars. R. S. c. 28, § 13.

No person shall enter any mill, mill yard, factory, machine shop, shipyard, covered bridge, stable or other building, with a lighted pipe or cigar, or shall light or smoke any pipe or cigar therein, under a penalty of five dollars, if a notice in plain legible characters that no smoking is allowed therein, is kept in a conspicuous position over or near each principal entrance to such building or place; and whoever defaces, removes or destroys such notice, forfeits ten dollars. R. S. c. 28, § 14.

Whoever kindles a fire on land not his own, without consent of the owner, forfeits ten dollars; if such fire spreads and damages the property of others, he forfeits not less than ten, nor more than five hundred dollars, and in either case he shall stand committed until fine and costs are paid, or he shall be imprisoned not more than three years. R. S. c. 28, § 15.

Whoever with intent to injure another, causes a fire to be kindled on his own or another's land, whereby the property of any other person is injured or destroyed, shall be fined not less than twenty, nor more than one thousand dollars, or imprisoned

not less than three months, nor more than three years. R. S. c. 28, § 16.

Whoever for a lawful purpose kindles a fire on his own land, shall do so at a suitable time and in a careful and prudent manner; and is liable, in an action on the case, to any person injured by his failure to comply with this provision. R. S. c. 28, § 17.

Persons engaged in driving lumber may kindle fires when necessary, but shall use the utmost caution to prevent them from spreading and doing damage, and if they fail so to do, they are subject to all the foregoing liabilities and penalties, as if said privilege had not been allowed. R. S. c. 28, § 18.

The common law right to an action for damages done by fires, is not taken away or diminished, and it may be pursued notwithstanding the penalties herein set forth, but any person availing himself of section seventeen is barred of his action at common law for the damage so sued for. And no action shall be brought at common law for kindling fires in the manner described in section eighteen; but if such fire spreads and does damage, the person who kindled it, and any persons present and concerned in driving the lumber, by whose act or neglect such fire is suffered to do damage, are liable, in an action on the case, for such damage. R. S. c. 28, § 19.

In every town, the municipal officers may make regulations, in conformity to which shall be kept in the town or transported from place to place all gunpowder, petroleum, coal oils, burning fluids, naphtha, benzine and all other explosive and illuminating substances which such officers adjudge dangerous to the lives or safety of citizens; and no person shall keep any such article in any other quantity or manner, than is prescribed in such regulations, under a penalty of not less than twenty, nor more than one hundred dollars for each offense; all such articles may be seized by any of said officers as forfeited; and within twenty days after such seizure, may be libeled according to law. R. S. c. 28, § 20.

A person injured by the explosion of such articles in the possession of any person contrary to such regulations, has an action for damages against such possessor, or against the owner if consant of such neglect. R. S. c. 28, § 21.

Any municipal officer, with a lawful search warrant, may enter any building or other place in his town to search for such articles supposed to be unlawfully concealed there. R. S. c. 28, § 22.

Rules and regulations, established in any town according to section twenty, shall not be in force until they have been published for three weeks successively in a newspaper in the county, or until attested copies of them have been posted in three public places in said town for at least three weeks. R. S. c. 28, § 23.

Penalties provided in the preceding sections may be recovered by complaint, indictment or action of debt, half to the town where the offense is committed, and half to the prosecutor. R. S. c. 28, § 24.

CHAPTER LXIX.

INSPECTION OF BUILDINGS.

In every town and city of more than two thousand inhabitants, the municipal officers shall annually in the month of April appoint an inspector of buildings, who shall be a man skilled in the construction of buildings, and shall determine his compensation. The municipal officers shall define the limits within which the inspector of buildings shall have jurisdiction, which shall include the thickly settled portion of each such city, and of each village in each such city or town. R. S. c. 28, § 25.

Such inspector shall inspect each new building during the process of construction, so far as may be necessary to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe, and that proper cut-offs are placed between the timbers in the walls and floorings where fire would be likely to spread; and may give such directions in writing to the owner or contractor as he deems necessary, concerning the construction of such building so as to render the same safe from the catching and spreading of fire. R. S. c. 28, § 26.

He shall inspect all buildings while in process of being repaired, and see that all reasonable safeguards are used against the catching and spreading of fire, and that the chimneys and flues are made safe; and he may give such directions in writing to the owner as he deems necessary concerning such repairs, as to ren-

der such building safe from the catching and spreading of fire. R. S. c. 28, § 27.

He shall at least once in three years, and oftener when required by the municipal officers, inspect chimneys, flues, funnels, stoves, furnaces, boilers and boiler connections, and heating apparatus in all the buildings within his jurisdiction, in which fire is kept or used, to ascertain if the same are safe against fire. He may give such directions in writing as he may deem necessary to the owner of said building to make changes in the construction or situation of such chimneys, flues, funnels, stoves, furnaces, boilers, boiler connections and heating apparatus, so as to make the same safe as aforesaid. And the municipal officers may require such inspection of any particular building at any time. R. S. c. 28, § 28.

An inspector of buildings in the performance of his official duty may enter any building for the purpose of making the inspection required by this chapter. R. S. c. 28, § 29.

An appeal in writing may be taken from any order or direction of the inspector of buildings to the municipal officers, whose order thereon shall be final. R. S. c. 28, § 30.

No new building shall be occupied until the inspector of buildings has given a certificate that the same has been built in accordance with the provisions of section twenty-six, and so as to be safe from fire; if the owner permits it to be so occupied without such certificate, he shall be liable to a fine of ten dollars for each week he permits such building to be so occupied, to be recovered by complaint or indictment. In case the inspector of buildings for any cause declines to give his certificate and the builder has in his own judgment complied with the provisions of section twenty-six, an appeal may be taken to the municipal officers and if on such appeal, it shall be decided by them that the provisions of said section have been complied with, the owner of said building shall not be liable to a fine for want of the certificate of the inspector. R. S. c. 28, § 31.

If the owner of any building neglects or refuses for more than thirty days to comply with any direction of the inspector of buildings given as aforesaid, concerning the repairs on any building, as provided in section twenty-seven, or to make such changes in the construction or situation of chimneys, flues, funnels, stoves, furnaces, boilers and boiler connections, and heating apparatus, as may be required by such inspector of buildings, under the provisions of section twenty-eight, or as may be confirmed by the

municipal officers on appeal, he shall be liable to a fine of ten dollars for each week he so neglects or refuses, to be recovered by complaint or indictment. R. S. c. 28, § 32.

Any owner or occupant of a building, who refuses to permit an inspector of buildings to enter his buildings, or willfully obstructs him in the inspection of such building as required by this chapter, shall be liable to a fine of not less than one, nor more than twenty dollars, to be recovered by complaint or indictment. R. S. c. 28, § 33.

The inspector of buildings and the municipal officers of any city or town may at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such buildings or premises they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said buildings or premises; *provided, however*, that if the said owner or occupant shall deem himself aggrieved by such order when made by the inspector of buildings he may, within twenty-four hours, appeal to the municipal officers, and the cause of the complaint shall be at once investigated by the direction of the latter, and unless by their authority the order above named is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant. The inspector of buildings or the municipal officers shall make, or cause to be made, an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction, upon complaint of any person having an interest in said buildings or premises or property adjacent thereto. Any owner or occupant of buildings or premises, failing to comply with the orders of the authorities above specified, shall be punished by a fine of not less than five dollars for each day's neglect. R. S. c. 28, § 34.

Municipal and police courts and trial justices shall have jurisdiction of the offenses named in the four preceding sections. R. S. c. 28, § 35.

Towns and cities may make by-laws not inconsistent with this chapter, defining more particularly the duties of such inspector of buildings, and the rules and regulations by which he is to be governed. R. S. c. 28, § 36.

CHAPTER LXX.

PROTECTION OF LIFE IN BUILDINGS USED FOR PUBLIC PURPOSES.

Every building intended temporarily or permanently for public use, and every schoolhouse of more than one story in height, and every schoolroom therein, shall have all inner doors, intended for egress, open outwards. The outer doors of all such buildings shall be kept open when the same are used by the public, unless they open outwards; but fly-doors opening both ways may be kept closed. R. S. c. 28, § 37.

Every public house where guests are lodged, and every building in which any trade, manufacture or business is carried on, requiring the presence of workmen above the first story, and all rooms used for public assembly or amusement, and all tenement houses three stories in height where only one stairway or means of egress from the upper stories of the building is provided, and all tenement houses of four or more stories in height, intended to be occupied by families, boarders or lodgers, above the third story, shall at all times be provided with suitable and sufficient fire escapes, outside stairs or ladders from each story or gallery above the level of the ground, easily accessible to all inmates in case of fire or of an alarm of fire; the sufficiency thereof to be determined as provided in the following section. R. S. c. 28, § 38.

In towns or parts of towns having no organized fire department, the municipal officers shall annually make careful inspection of the precautions and safeguards provided in compliance with the foregoing requirements, and pass upon their sufficiency as to arrangement and number, and upon their state of repair; and direct such alterations, additions and repairs as they adjudge necessary. In towns, cities and villages having an organized fire department, the duties aforesaid shall be discharged by the board of fire engineers. R. S. c. 28, § 39.

Such municipal officers or fire engineers shall give written notice to the occupant of such building, also to the owner

thereof, if known, of their determination as to the sufficiency of said precautions and safeguards, specifying in said notice any alteration, addition or repair which they require. Sixty days are allowed for compliance with such notice and order. R. S. c. 28, § 40.

Any owner or occupant who neglects to comply with such order, within the time so allowed, forfeits fifty dollars, besides five dollars for every day's continuance of such neglect; and the building or part of a building so occupied shall be deemed a common nuisance, without any other evidence than proof of its use; and the keeper shall be punished accordingly. Said officers may forbid the use of such building for any public purpose until their order has been complied with. And if the owner or occupant of said building lets or uses the same in violation of such order, he forfeits not less than twenty, nor more than fifty dollars for each offense. R. S. c. 28, § 41.

Whenever the municipal officers or engineers upon inspection, find that proper safeguards and precautions for escape in case of fire, or of alarm, have been provided, they shall give to the occupant of such building a certificate, under their hands, of such fact; which shall be valid for one year only from its date; and a reasonable compensation for such inspection shall be paid by the city or town in which any such building is located, by an order drawn upon its treasurer. Such officers shall return to the clerk's office of their town, monthly, a list of such certificates by them issued, which the clerk shall record in a suitable book. R. S. c. 28, § 42.

Every person receiving such certificate shall keep the same posted in such building. Such annual certificate, so posted, is prima facie evidence of the inspection of such building, and of the presence of such suitable safeguards and precaution. Every occupant of such building who neglects or refuses to procure such certificate, or to post the same as aforesaid, forfeits ten dollars for every week that he so neglects and refuses. R. S. c. 28, § 43.

Every municipal officer or fire engineer who refuses or neglects to perform the duties imposed upon him by the seven preceding sections forfeits fifty dollars. R. S. c. 28, § 44.

All fines and forfeitures imposed by the four preceding sections may be recovered by the town where the building is located, by an action on the case, or by indictment. R. S. c. 28, § 45.

CHAPTER LXXI.

INVESTIGATION OF CAUSES OF FIRES.

When property is destroyed or damaged by fire the municipal officers in cities and towns shall immediately notify the insurance commissioner of the same, and shall investigate the cause, circumstances and origin of the fire, and especially examine whether it was the result of carelessness or of design. The investigation shall be commenced within three days after the occurrence of the fire, not including the Lord's day, and the insurance commissioner may supervise and direct such investigation whenever he deems it expedient or necessary. R. S. c. 28, § 46.

When the municipal officers have completed their investigation, which shall be within two weeks after the occurrence of the fire, they shall immediately file with the insurance commissioner a written statement of all the facts relating to the cause, circumstances and origin of the fire; the kind, value and ownership of the property destroyed or damaged, and such other information as may be required by said commissioner. The insurance commissioner shall make a record of all fires investigated under sections forty-six to fifty-three inclusive, together with all facts, statistics and circumstances connected therewith. Such record shall at all times be open to public inspection, and such portions of it as the commissioner deems expedient shall be published in his annual report to the governor and council. R. S. c. 28, § 47.

The insurance commissioner may, whenever he deems it expedient or advisable, examine or cause to be examined the cause, circumstances and origin of all fires occurring in the cities and towns within the state, of which he has knowledge, by which property is damaged or destroyed, and may specially examine and decide whether the same was the result of carelessness or design. The insurance commissioner shall, when in his opinion said proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of

any facts or to have means of knowledge in relation to the matters as to which such examination is made, and may cause the same to be reduced to writing. If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson or incendiarism, he shall cause such person to be arrested and charged with such offense, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all information obtained by him, including a copy of all pertinent and material testimony in the case. R. S. c. 28, § 48.

The insurance commissioner, the deputy insurance commissioner and the municipal officers of cities and towns shall each have the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses before them or either of them, to testify in relation to any matter which is by the provisions of the three preceding sections a subject of inquiry and investigation. Said insurance commissioner, deputy insurance commissioner and municipal officers may also administer oaths and affirmations to persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such. Said insurance commissioner and his subordinates shall have authority, at all times of the day or night, in the performance of the duties imposed by this chapter, to enter upon and examine any building or premises where a fire is in progress or has occurred, and other buildings or premises adjoining or near the same. All investigations held by or under the direction of the insurance commissioner, deputy insurance commissioner or the municipal officers may in their discretion be private, and persons other than those required to be present by the provisions hereof may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from one another and not allowed to communicate with one another until they have been examined. R. S. c. 28, § 49.

Every fire insurance company or association transacting business in the state shall report to the insurance commissioner, within ten days after the adjustment of every loss, the amount of all policies issued by said company on the property destroyed or damaged, the amount paid or payable on account of such loss, and such other information relating to the matter as the commissioner may require. R. S. c. 28, § 50.

The insurance commissioner may employ such clerks and assistants, provide such blanks, and incur such expenses as may

be necessary to carry out the provisions of sections forty-six to fifty-three inclusive, not to exceed two thousand dollars in any year, and all bills and expenses incurred shall be audited by the governor and council. R. S. c. 28, § 51.

Municipal officers shall record or cause to be recorded, in a book provided by the insurance commissioner, all returns made under the provisions of the six preceding sections. R. S. c. 28, § 52.

Any city or town officer, or any insurance company neglecting or refusing to perform any duty required by the provisions of the seven preceding sections shall be punished by a fine of not less than ten, nor more than one hundred dollars for each offense. R. S. c. 28, § 53.

CHAPTER LXXII.

POLICE OFFICERS.

The selectmen of towns may appoint and shall control and fix the compensation of police officers. Such appointment shall be in writing, signed by a majority of the selectmen and recorded by the town clerk, and shall be for such time not exceeding one year as the selectmen shall determine. R. S. c. 4, § 94.

Police officers so appointed shall severally have all the powers of a constable in criminal matters, within the limits of the town, and may be removed by the selectmen when they shall deem that the interests of the town require such removal. R. S. c. 4, § 95.

Form of the Order.

To ———, of the town of ———:

The undersigned, selectmen of the town of ———, by virtue of the authority vested in us by law, do hereby appoint you a police officer for said town of ———, and fix your compensation for all services by you to be performed as a police officer for the term of this appointment, at ——— dollars per day [*or in such other manner as may be determined*]. You are required to keep a suitable watch in said town, from and after the date hereof, until the ——— day of ——— next, said watch to be kept from ——— o'clock in the even-

ing until sunrise [*or as may otherwise be determined*]. You will walk the rounds in and about the streets, wharves, lanes, and principal inhabited parts of said town, and perform all duties required of police officers by the laws of the state and by-laws and ordinances of the said town.

Given under our hands, at said —, this — day of —, A. D. 19—.

_____,
_____, } *Selectmen of* —.
_____, }

CHAPTER LXXIII.

INNOLDERS AND VICTUALERS.

The municipal officers, treasurer and clerk of every town shall annually meet on the first Monday of May, or on the succeeding day, or both, and at such time and place in said town as they appoint by posting notices in two or more public places therein, at least seven days previously, stating the purpose of the meeting; and at such meeting they may license under their hands as many persons of good moral character, and under such restrictions and regulations as they deem necessary, to be innholders and victualers in said town, until the day succeeding the first Monday in May of the next year, in such house or other building, as the license specifies. And at any meeting so notified and held they may revoke licenses so granted, if in their opinion there is sufficient cause. R. S. c. 29, § 1.

No person shall receive his license until he has given his bond to the treasurer, to the acceptance of the board granting it, with one or more sureties in the penal sum of three hundred dollars, in substance as follows, viz. :

Know all men that we, —, as principal, and —, and —, as sureties, are held and stand firmly bound to —, treasurer of the town [*or city*] of —, in the sum of three hundred dollars, to be paid to him, or his successor in said office; to the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals. Dated the — day of —, in the year 19—. The condition of this obligation is such that, whereas the above-bounden — has been duly licensed as a — within said town [*or city*], until the day succeeding the first Monday of May next; now if in all respects he shall conform to the provisions of law relating to the business for which he is

licensed, and to the rules and regulations as provided by the licensing board in reference thereto, and shall not violate any law of the state relating to intoxicating liquors, then this obligation shall be void, otherwise shall remain in full force.

R. S. c. 29, § 2.

The licensing board may, at any other time, at a meeting specially called, and notified as aforesaid for the consideration of any application therefor to them made, grant such license on like conditions; but all such licenses expire on the day aforesaid. R. S. c. 29, § 3.

Every person licensed shall pay to the treasurer, for the use of such board, one dollar; and the clerk shall make a record of all licenses granted. R. S. c. 29, § 4.

Every innholder shall, at all times, be furnished with suitable provisions and lodging for strangers and travelers, and with stable room, hay and provender for their horses and cattle; and with pasturing, if it is required by the terms of his license; and he shall grant such reasonable accommodations as occasion requires, to strangers, travelers and others. R. S. c. 29, § 5.

In case of loss by fire, innholders are answerable to their guests only for ordinary and reasonable care in the custody of their baggage or other property. R. S. c. 29, § 6.

Innholders are not liable for losses sustained by their guests, except for wearing apparel, articles worn or carried upon the person to a reasonable amount, personal baggage and money necessary for traveling expenses and personal use, unless upon delivery or offer of delivery, by such guests, of their money, jewelry or other property, to the innholder, his agent or servants, for safe custody. R. S. c. 29, § 7.

The value of gold watch, gold bracelets, gold thimble, three gold rings, gold neck pin, may be recovered if innkeeper liable for loss. These articles were held to be such as might properly be used daily while traveling. 77 Me. 360.

An innholder against whom a claim is made for loss sustained by a guest, may in all cases show that such loss is attributable to the negligence of the guest, or to his non-compliance with the regulations of the inn; *provided*, that such regulations are reasonable and proper, and are shown to have been brought to the notice of the guest. R. S. c. 29, § 8.

Every victualer has all the rights and privileges and is subject to all the duties and obligations of an innholder, except furnish-

ing lodging for travelers, and stable room, hay or provender for cattle. R. S. c. 29, § 9.

No innholder or victualer shall have or keep for gambling purposes about his house, shop or other buildings, yards, gardens or dependencies, any dice, cards, bowls, billiards, quoits or other implements used in gambling; or suffer any person resorting thither to use or exercise for gambling purposes any of said games, or any other unlawful game or sport therein; and every person who uses or exercises any such game or sport for gambling purposes in any place herein prohibited, forfeits five dollars. R. S. c. 29, § 10.

No innholder or victualer shall suffer any reveling or riotous or disorderly conduct in his house, shop or other dependencies; nor any drunkenness or excess therein. R. S. c. 29, § 11.

No person shall be a common innholder or victualer without a license, under a penalty of not more than fifty dollars. R. S. c. 29, § 12.

The foregoing statute is explicitly prohibitory, and the license required is clearly for the protection of the public and to prevent improper persons from engaging in a particular business. Where the plaintiff, as innholder, furnished board and lodging to the defendant at his inn, and had not obtained the license required by the statute, the plaintiff cannot recover for board and lodging furnished to the defendant. 89 Me. 443.

When an innkeeper directed his guest to take his horse and cart to a livery stable which belonged to the innkeeper, but was not connected with the inn, and the guest did so, and put the horse and cart into the care of the innkeeper's hostler; *Held*, that this constituted a delivery to the innkeeper for safe-keeping, and that the defendant received the plaintiff's goods as an innkeeper and became responsible under the statute for the safe-keeping thereof. 91 Me. 274.

The licensing board shall prosecute for any violations of the foregoing sections that come to their knowledge, by complaint, indictment or action of debt; and all penalties recovered shall inure to the town where the offense is committed. Any citizen of the state may prosecute for any violation of the preceding sections in the same manner as the licensing board may prosecute. R. S. c. 29, § 13.

Whoever puts up at an inn, hotel or boarding-house, and without having an express agreement for credit, procures food, entertainment or accommodation without paying therefor, and

with intent to defraud the owner or keeper of the inn, hotel or boarding-house out of the pay for the same; or, with intent to cheat or defraud such owner or keeper out of the pay therefor, obtains credit at an inn, hotel or boarding-house for such food, entertainment or accommodation by means of any false show of baggage or effects brought thereto; or with such intent, removes or causes to be removed any baggage or effects from an inn, hotel or boarding-house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars. R. S. c. 127, § 5.

Innholders and keepers of hotels and boarding-houses shall post up a printed copy of the foregoing section and this section, in a conspicuous place in each room of their inns, hotels and boarding-houses. R. S. c. 127, § 6.

The business of an innkeeper is viewed by the law as a public employment, and accordingly, one of the distinguishing characteristics of that business is the obligation to receive and entertain, as guests, all who choose to visit the house. In this lies the distinction between an innkeeper and the keeper of a boarding-house. 99 Am. Dec. 657.

Mere apprehension of insult will not justify refusal to receive guest. The facts and circumstances must justify such apprehension. Lack of food is no excuse for such refusal unless good reason is shown for such lack. 76 Me. 540.

A town may at its annual meeting, fix the times in which clams may be taken within its limits, and the prices for which its municipal officers shall grant permits therefor; and unless so regulated by vote, residents of the town may take clams without written permit. But without permit, any inhabitant within his own town, or transient person therein, may take clams for the consumption of himself and family. This section does not apply to hotel keepers taking clams for the use of their hotels, nor does it interfere with any law relating to the taking of shell fish for bait by fishermen. P. L. 1909 c. 60.

Innholders or keepers of boarding-houses have a lien on the goods and personal baggage of their guests and boarders, to secure the payment of any money due from them for board or lodging, and may enforce the same by a sale of such goods or baggage, in the manner following. After such goods or personal baggage have remained in the possession of such innholder or

boarding-house keeper for six months, unredeemed, they may be sold at auction to pay the sum due for board or lodging, and the expense of advertising and selling the same. Such innholder or boarding-house keeper shall give thirty days' notice of the time and place of such sale, in a newspaper published in the town where such articles are held, if any, otherwise notice thereof shall be posted in three conspicuous places therein; said notice shall give a description of such articles, and the name of the owner; and the proceeds of sale, after deducting all charges and expense of advertising and notice, shall be applied in satisfaction of the claim upon which such articles are sold, and the balance, if any, shall be held for the benefit of the person entitled thereto. All such sales shall be recorded in the office of the town clerk where the sale takes place, in a suitable book open to public inspection, in which the articles sold shall be correctly described, with the charges and expenses of advertising and selling, and the prices at which they were sold. R. S. c. 93, § 65.

If an innholder or victualer, on the Lord's Day, suffers any persons, except travelers, strangers or lodgers, to abide in his house, yard or field, drinking or spending their time idly, at play or doing any secular business, except works of charity or necessity, he shall be punished by fine not exceeding four dollars for each person thus suffered to abide; and if after conviction he is again guilty, by fine not exceeding ten dollars for each offense; and upon a third conviction, he shall also be incapable of holding any license; and every person so abiding shall be fined not exceeding four dollars for each offense. R. S. c. 125, § 26.

Every public house where guests are lodged, and every building in which any trade, manufacture or business is carried on, requiring the presence of workmen above the first story, and all rooms used for public assembly or amusement, and all tenement houses three stories in height, where only one stairway or means of egress from the upper stories of the building is provided, and all tenement houses of four or more stories in height, intended to be occupied by families, boarders or lodgers, above the third story, and all schoolhouses two stories or more in height, shall at all times be provided with proper egresses or other means of escape from fire sufficient for the use of all persons accommodated, assembled, employed, lodged or resident therein. These egresses and means of escape shall be kept unobstructed, in good repair and ready for use, the sufficiency thereof to be determined as provided in the revised statutes. P. L. 1909 c. 194.

CHAPTER LXXIV.

LORD'S DAY—RELIGIOUS MEETINGS.

The Lord's Day includes the time between twelve o'clock on Saturday night and twelve o'clock on Sunday night. R. S. c. 125, § 27.

Whoever, on the Lord's Day, keeps open his shop, workhouse, warehouse or place of business, travels, or does any work, labor or business on that day, except works of necessity or charity; uses any sport, game or recreation; or is present at any dancing, public diversion, show or entertainment, encouraging the same, shall be punished by fine not exceeding ten dollars. R. S. c. 125, § 25.

If an innholder or victualer, on the Lord's Day, suffers any persons, except travelers, strangers or lodgers, to abide in his house, yard or field, drinking or spending their time idly, at play or doing any secular business, except works of charity or necessity, he shall be punished by fine not exceeding four dollars for each person thus suffered to abide; and if after conviction he is again guilty, by fine not exceeding ten dollars for each offense; and upon a third conviction, he shall also be incapable of holding any license; and every person so abiding shall be fined not exceeding four dollars for each offense. R. S. c. 125, § 26.

No person conscientiously believing that the seventh day of the week ought to be observed as the Sabbath, and actually refraining from secular business and labor on that day, is liable to said penalties for doing such business or labor on the first day of the week, if he does not disturb other persons. R. S. c. 125, § 28.

Whoever, on the Lord's Day or at any other time, behaves rudely or indecently within the walls of any house of public worship; willfully interrupts or disturbs any assembly for religious worship within the place of such assembly or out of it; sells or exposes for sale within one mile thereof and during the time of their meeting, refreshments or merchandise, except in his

usual course and place of business; exhibits any show or play; engages or aids in any horse race, gambling or other sport, to the disturbance of such assembly; or, coming within their neighborhood, refuses, on request, either immediately and peaceably to retire beyond their hearing, or to conform to their established regulations, shall be punished by imprisonment for not more than thirty days, and by fine not exceeding ten dollars. R. S. c. 125, § 22.

On application of the presiding elder, officers or preachers in charge, or tent masters, of a religious or temperance camp meeting in any town, the municipal officers thereof or a majority of them, shall in writing, appoint one or more police officers to preserve the peace during such meeting, who may arrest any violator of the preceding section, detain him until a warrant can be issued, and execute such warrant when directed to them; and the presiding officer or committee of arrangements of such religious assembly or meeting may appoint some suitable persons to keep boarders and sell refreshments at such meetings, who shall conform therein to such regulations as the officers appointing them prescribe. R. S. c. 125, § 23.

Every justice of the peace, sheriff, deputy sheriff, constable and grand juror, present at any such religious assembly disturbed as aforesaid, shall arrest or cause to be arrested every such offender, and detain him until the close of such assembly, or until he can be taken before a magistrate; and all persons present at such assembly, shall, on request, assist said officers in the execution of their duty, under the same penalties for neglect or refusal that are provided for neglecting or refusing to aid officers in other cases. R. S. c. 125, § 24.

Any person arrested on the Lord's Day, or on the afternoon or evening preceding, for a bailable offense, may be admitted to bail on that day by a bail commissioner. R. S. c. 101, § 36.

No license issued to a person as taxidermist shall authorize such person to kill any birds or take any nests or eggs thereof on Sunday. R. S. c. 32, § 10.

No court shall be held on Sunday. R. S. c. 79, § 52.

No person shall serve or execute any civil process on the Lord's Day; but such service is void, and the person executing it is liable in damages to the party aggrieved as if he had no process. R. S. c. 83, § 84.

A warrant for arrest of a person charged with the commission

of an offense may issue on any day, Sundays and holidays not excepted. R. S. c. 133, § 6.

Any promissory note, draft, check, acceptance, bill of exchange, bond or other evidence of indebtedness made, drawn or accepted after July one, eighteen hundred and ninety-seven, that shall fall due on Sunday or any bank holiday, shall be payable and presentable for payment on the secular or business day next succeeding such Sunday or holiday. If a bank holiday falls on Sunday, the following Monday shall be deemed a bank holiday for the purposes of this chapter. R. S. c. 34, § 11.

No person who receives a valuable consideration for a contract, express or implied, made on the Lord's Day, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration; nor shall the provisions of chapter one hundred twenty-five, relating to the observance of the Lord's Day, affect in any way the rights or remedy of either party in any action for a tort or injury suffered on that day. R. S. c. 84, § 131.

Sunday is a close time, on which it is not lawful to hunt, kill or destroy game or birds of any kind, under the penalties imposed therefor during other close time; but the penalties already imposed for the violation of the Sunday laws by the statutes of this state are not hereby repealed or diminished. R. S. c. 32, § 21.

No deed, contract, receipt or other instrument in writing, is void because dated on the Lord's Day, without other proof than the date, of its having been made and delivered on that day. R. S. c. 84, § 130.

Riding or walking for exercise on the Lord's Day, is not a violation of law. 65 Me. 34; 69 Me. 116; 82 Me. 196.

CHAPTER LXXV.

PUBLIC EXHIBITIONS, BOWLING ALLEYS, BILLIARD ROOMS, ETC.

Whoever, for money or other valuable article, exhibits any images, pageantry, sleight of hand tricks, puppet show, circus, feats of balancing, wire dancing, personal agility, dexterity or theatrical performances, without a license therefor as hereinafter provided forfeits, for every offense, not more than one hundred nor less than ten dollars; but this prohibition does not extend to any permanently established museum. R. S. c. 31, § 1.

The municipal officers of towns may grant licenses for any of the foregoing exhibitions or performances therein, on receiving for their town such sum as they deem proper; twenty-four hours being allowed for each exhibition or performance; and they shall prosecute, by complaint for the use of their town, all violators of the preceding section. R. S. c. 31, § 2.

Form of License.

We, the subscribers, selectmen of the town of —, hereby license — to exhibit a menagerie of animals [*or such other exhibit*] within said town, on the — day of —, he having paid to us — dollars therefor, to the use of said town.

Given under our hands this — day of —, 19—.

A. B., }
C. D., } *Selectmen of —.*
E. F., }

Whoever keeps a bowling alley, pool, bagatelle or billiard room without a license, forfeits ten dollars for each day that such alley or room is so kept. R. S. c. 31, § 3.

The municipal officers of towns may license suitable persons to keep bowling alleys, pool, bagatelle, and billiard rooms therein, in any place where it will not disturb the peace and quiet of a family, for which the person licensed shall pay ten dollars to such town; such licenses expire on the first day of May after they are granted, unless sooner revoked. R. S. c. 31, § 4.

Every person so licensed shall at the time he receives his license, give bond to the town with two good and sufficient sureties, in not less than one hundred dollars, conditioned that he will not permit gambling or drinking of intoxicating liquors in or about his premises ; or any minor to play or roll therein without the written consent of his parent, guardian or master ; or his alley, pool, bagatelle or billiard room to be opened or used between ten o'clock in the evening and sunrise. R. S. c. 31, § 5.

On proof that any person so licensed, has violated any condition of his bond, said officers shall revoke his license and enforce payment of his bond to their town ; and no such person shall afterwards be licensed therein for such purpose. R. S. c. 31, § 6.

The keeper of any bowling alley, pool, bagatelle or billiard room, who violates any condition of his bond, forfeits ten dollars for the first offense, and twenty dollars for each subsequent offense ; and any marshal, sheriff, police or other officer may at any time enter said alley, pool, bagatelle or billiard room or rooms connected therewith to enforce this or any other law ; and whoever obstructs his entrance forfeits not less than five, nor more than twenty dollars. R. S. c. 31, § 7.

Any person licensed to own, keep and operate a bowling alley or bowling alleys, pool, bagatelle or billiard rooms, under the provisions of this chapter, may be granted permission by the municipal officers of the town or city where such alley or alleys, pool, bagatelle or billiard rooms are situated, to keep the same open to the public until midnight, when in the opinion of such municipal officers no person or persons residing in the immediate neighborhood will be disturbed thereby. In such case the condition of the bond required by section five shall be varied accordingly. R. S. c. 31, § 8.

Every person who keeps a roller skating rink or room, shall obtain a license from the municipal officers of the city or town where such rink is located and shall pay therefor such sum as said municipal officers may deem proper. Any person keeping a roller skating rink without such license, shall be fined ten dollars for each day it is so kept. R. S. c. 31, § 9.

Every person so licensed shall keep such rink closed between ten o'clock in the evening and sunrise, unless express permission in writing, to keep it open a longer time, is obtained from the municipal officers of the city or town where such rink is located.

Any person violating this section, shall be fined ten dollars for every such offense. R. S. c. 31, § 10.

Whoever shall go about from town to town, or from place to place in any town, exhibiting any bear, shall be punished by fine not exceeding twenty dollars, or by imprisonment not exceeding thirty days, and such bear, after such notice to the owner thereof as the court may order, and a hearing thereon, may be declared forfeited, and ordered to be killed; but this section shall not be construed to prohibit the transportation or exhibition of bears in any authorized menagerie. R. S. c. 125, § 40.

The officers of any such society may appoint a sufficient number of suitable persons, to act as constables at cattle shows and exhibitions, with all the powers of constables, for the preservation of the public peace, and the enforcement of the regulations of said society, within the towns where such shows and exhibitions are held, from noon of the day preceding the commencement of the same until noon of the day succeeding the termination thereof, and no longer. R. S. c. 60, § 23.

Whoever makes entries of animals or articles as competitors for premiums or purses offered by any agricultural society, or by any person or association in the state, shall be holden to pay the entry fee in accordance with the advertised rules and regulations of any such society, person or association, not in conflict with the laws of the state; and a lien is hereby created upon such animals and articles for such entry fee to secure payment thereof with costs, to be enforced by an action of debt against the person owning such animals or articles, or the person entering the same; the same to be enforced in the same manner as liens on goods in possession and choses in action, but such lien shall not affect the title of any innocent purchaser of said animals or articles without actual notice of such lien. R. S. c. 60, § 27.

Agricultural societies, persons and associations, holding public exhibitions for competition for premiums or purses are authorized to conduct and manage the same in accordance with the advertised rules and regulations, not in conflict with the laws of the state. R. S. c. 60, § 28.

Whoever publicly exhibits any photographic or other reproduction of a prize fight shall be punished by a fine not exceeding five hundred dollars. R. S. c. 125, § 17.

Whoever in connection with any show or entertainment, whether public or private, either as owner, manager or director, or in any other capacity, uses, or causes or permits to be used, a

phonograph or other contrivance, instrument or device, which utters or gives forth any profane, obscene or impure language, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment. R. S. c. 125, § 18.

Whoever as owner, manager, director, agent or in any other capacity, prepares, advertises, gives, presents or participates in any obscene, indecent, immoral or impure show or entertainment, or in any show or entertainment manifestly tending to corrupt the morals of youth, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment. R. S. c. 125, § 19.

CHAPTER LXXVI.

GAMBLING, LOTTERIES AND POLICY SHOPS.

Whoever keeps or assists in keeping a gambling house, or tenement or other place occupied, used, kept or resorted to for the purposes described in section eleven of chapter one hundred and twenty-six of the revised statutes as amended by section two of this act, or is found gambling or present as described in said section eleven so amended as aforesaid, or permits any person to gamble in any way in any tenement or other place under his care or control, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than four months; and the municipal officers, constables and police officers of towns and cities, and the assessors of plantations, are required promptly to enforce the laws against gambling rooms, and to make complaint against any person in their respective municipalities when there is probable cause to believe such person to be guilty of a violation of this section. Trial justices and judges of municipal or police courts, shall have jurisdiction in all prosecutions for violations of this section. R. S. c. 126, § 1.

Whoever gambles, or bets on any person gambling, shall be fined not less than one, nor more than twenty dollars, to be recovered by complaint or indictment to the use of the prosecutor. R. S. c. 126, § 2.

Whoever is convicted, by indictment found within six months, of winning, at one time or sitting, by gambling, or by betting on persons gambling, money or goods of the value of three dollars or more, and of receiving or taking security therefor, forfeits to the town where the offense is committed, double the value of the property so won and received. R. S. c. 126, § 3.

Whoever engages in or has anything to do with pool selling shall be punished by imprisonment in the state prison for not more than two years, and by fine of not more than two thousand dollars. R. S. c. 126, § 4.

Whoever, upon any railroad train or in any railroad car, or upon any steamboat, gambles or bets upon any person gambling, shall be punished by fine of not less than one hundred dollars, or by imprisonment for not less than three months. R. S. c. 126, § 5.

Every conductor or other person having charge of a railroad train, is required to arrest or cause to be arrested all persons gambling on his train, and to detain them in his custody until a warrant can be procured from the proper authorities, and he may employ all necessary aids for such purpose. R. S. c. 126, § 6.

A copy of the two preceding sections shall be conspicuously posted in every car in which passengers are usually carried on any steam railroad, and in every steamboat. Any railroad or steamboat company, or the proprietors of any steamboat, refusing or neglecting to comply with this requirement, forfeit for each offense one hundred dollars, to be recovered by indictment in any county in which said railroad company runs trains or the steamboat company does business. R. S. c. 126, § 7.

Whoever, by gambling, or betting on persons gambling, loses to any person so gambling or betting, any money or goods, and pays or delivers any part thereof, may sue for and recover the same of the winner, in an action on the case, brought within three months thereafter; and if the loser does not, without covin or collusion, within said time prosecute therefor with effect, any other person may sue for and recover of the winner treble the value of the same in such action, half to his own use, and half to the town; and all executions issued on judgments, in favor of the loser, or in favor of a third person, as above mentioned, shall show that the judgment was rendered against the defendant for or on account of money won at gambling, and shall order the defendant to be committed to jail for three months from the date of arrest, at the county's expense, unless the judgment, costs

and board while in jail, are sooner paid; after which time, he may be released, on giving bond or disclosing, as in case of poor debtors. R. S. c. 126, § 8.

In any such action brought by the loser against the winner, the plaintiff may offer to make oath, that such money or goods were lost by gambling with the defendant, and the court shall thereupon render judgment for the plaintiff for the amount thereof, unless the defendant will make oath, that he did not obtain any part thereof, by gambling, and if he so discharges himself, he shall recover costs; or the plaintiff may prove his case in any other legal mode. R. S. c. 126, § 9.

All notes, bills, bonds, mortgages, securities or conveyances, given in whole or in part for money or goods won by gambling or betting on persons gambling, or given to repay money lent or advanced for gambling or betting, or lent or advanced at the time and place thereof, are utterly void against all persons, except *bona fide* subsequent purchasers of real estate, and holders of negotiable paper for a valuable consideration without notice. R. S. c. 126, § 10.

When a person makes oath before a trial justice or judge of a municipal or police court that he has reason to suspect and does suspect that any tenement or other place is unlawfully used as and for a common gambling house, for the purpose of gambling for money or other property, or is kept, used or occupied for promoting a lottery, or for the sale of lottery tickets, or for promoting the game known as policy lottery or policy, or for the buying or selling of pools or registering of bets upon any race, game, contest, act or event, and that persons resort to the same for any such purpose, such magistrate, whether the names of the persons last mentioned are known to the complainant or not, shall issue a warrant commanding the sheriff or any of his deputies or any constable or police officer to enter such tenement or other place, and to arrest the keepers thereof, all persons in any way assisting in keeping the same, whether as janitor, door-keeper, watchman, or otherwise, all persons who are there found participating in any form of gambling and all persons present whether so participating or not, if any lottery, policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any bet, or other implements, apparatus or materials of any form of gambling are found in said place, and to take into their custody all the implements, apparatus or materials of gambling, as aforesaid, and all the personal property, furniture and fixtures so that they may be forthcoming before some court or magistrate,

to be dealt with according to law. All articles and property seized under the provisions of this section, or found in the possession or under the control of any person arrested for keeping or assisting in keeping a gambling house or for gambling, shall be disposed of in the manner provided in the following section for the disposal of counterfeiting and burglars' tools; and the finding in any tenement or other place of any lottery, policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any bet, or other implement, apparatus or materials of any form of gambling shall be prima facie evidence that said tenement or other place is occupied, used, kept and resorted to for the purpose of gambling. R. S. c. 126, § 11.

All tools, machines, dies, plates or materials provided for making counterfeit or spurious coin, or for forging bank notes or other instruments; all burglars' tools, or implements prepared or designed for burglary; all lottery tickets or materials for a lottery or procured for the purpose of a lottery; all gambling apparatus or implements for gambling, and all moneys therein contained, shall, when the same are found and taken by virtue of a search warrant, or are found in the possession or under the control of any person arrested for forgery, counterfeiting, burglary, selling lottery tickets or gambling, be safely kept by the direction of the court or magistrate having cognizance of the case, so long as may be necessary for their being used as evidence on any trial. All such articles, devices, tools and materials, shall thereupon be declared forfeited by said court, and ordered destroyed, and shall by order of the court rendering final judgment be turned over to the sheriff of the county where the seizure was made, or to such of his deputies as the court shall order, by any officer competent to serve the process on which they were seized, who shall forthwith make return accordingly to said court; and said sheriff, or his said deputy, shall receipt to said officer therefor. As soon thereafter as may be said sheriff, or his said deputy receiving said forfeited articles, shall burn or otherwise destroy them, and make return to said court as to how he executed its order; *provided, however*, that all moneys so seized shall be declared forfeited to the county in which they were seized. R. S. c. 126, § 12.

CHAPTER LXXVII.

**PROTECTION OF SHEEP, DOG LICENSES, MISCHIEVOUS
DOGS AND BOUNTY ON WOLVES, BEARS
AND WILDCATS.**

Assessors of taxes shall include in their inventories lists of all dogs owned by or in the possession of any inhabitant on the first day of April, setting the number and sex thereof opposite the names of their respective owners or persons in whose possession the same are found, and make a return to the treasurer of state of said lists and also of the number of dogs killed as required by section seven of this chapter on or before the fifteenth day of June following; and if any city or town fail to return to the treasurer of state on or before September first of each year, a sum of money equal to the license required by this chapter, on all dogs living on the first day of June preceding, such deficiency shall be collected in the same manner as the state tax of such delinquent city or town for the following year. R. S. c. 222, § 2.

Every owner or keeper, on the first day of April, of a dog more than four months old, shall annually before the tenth day of said April, cause it to be registered, numbered, described and licensed for one year commencing with the first day of April aforesaid, in the office of the clerk of the city or town where said dog is kept, and shall keep around its neck a collar distinctly marked with the owner's name and its registered number, and shall pay to said clerk for a license the sum of one dollar and fifteen cents for each male dog and for each female dog incapable of producing young so kept, and five dollars and fifteen cents for each female dog capable of producing young. Any person becoming the owner or keeper of a dog after the first day of April, not duly licensed as herein required, shall within ten days after he becomes the owner or keeper of said dog cause said dog to be described and licensed as provided above. Every owner or keeper of dogs, kept for breeding purposes, may receive annually a special kennel license authorizing him to keep said dogs for said purpose, provided he keep said dogs within a proper enclos-

ure. When the number of dogs so kept does not exceed ten, the fee for such license shall be ten dollars and fifteen cents; when the number of dogs so kept exceeds ten, the fee for such license shall be twenty dollars and fifteen cents and no fees shall be required for the dogs of such owner or keeper under the age of six months. Dogs covered by kennel license shall be exempted from the provisions of this section requiring registration, numbering, and collaring. P. L. 1909 c. 222, § 3.

The clerks of cities and towns shall issue said license and receive the money therefor, and pay the same to the treasurer of their respective cities or towns within thirty days thereafter, retaining to their own use, the sum of fifteen cents for each license so issued; and the said treasurer shall pay the money so received to the treasurer of state on or before September first of each year who shall credit the same to a fund called "Dog Licenses." Such clerks shall keep a record of all licenses issued by them, with the names of the owners or keepers of dogs licensed, and the sex, registered numbers and description of all such dogs; *provided, however*, that the sex, registered number and description shall not be required of dogs covered by a kennel license. P. L. 1909 c. 222, § 4.

The treasurer of each city or town shall keep an accurate and separate account of all moneys received and expended by him under the provisions of this chapter. P. L. 1909 c. 222, § 5.

Whoever keeps a dog contrary to the provisions of this act shall forfeit ten dollars, five of which shall be paid to the complainant and five to the treasurer of the town in which the dog is kept, and in addition thereto shall pay the cost of prosecution. P. L. 1909 c. 222, § 6.

The mayor of each city and the municipal officers of each town or plantation shall annually within ten days from the first day of May issue a warrant, returnable on the first day of June following, to one or more police officers or constables, directing them to proceed forthwith either to kill or cause to be killed all dogs within said city, town or plantation not licensed, collared or enclosed according to the provisions of this act, and said constable or police officer shall or any other person may enter complaint against the owner or keeper thereof. On the first day of June, the mayor of cities and the municipal officers of towns and plantations shall issue to one or more police officers or constables a warrant returnable on the first Monday of the following Febru-

ary, directing said police officers or constables to kill or cause to be killed forthwith any dog not licensed or collared according to the provisions of this act and to enter complaint against the owner or keeper thereof. P. L. 1909 c. 222, § 7.

Each police officer or constable to whom the warrants named in the preceding section are issued, shall return the same at the times specified and shall state in their return on each warrant the number of dogs killed, the names of the owners and keepers thereof, and whether all unlicensed dogs therein have been killed, and the names of persons against whom complaints have been made under the provisions of this act. Such officers shall receive from the city, town or plantation the sum of two dollars for each dog killed, and for such other services rendered under the provisions of this act, they shall receive such compensation as the municipal officers may determine. P. L. 1909 c. 222, § 8.

The secretary of state shall seasonably forward to the clerks of the several cities, towns and plantations, copies of the eight preceding sections, and each clerk shall annually, at least twenty days before the first day of April, post said copies in the usual places of posting notices of the annual municipal or town elections. P. L. 1909 c. 222, § 9.

When a dog does damage to a person or his property, his owner or keeper, and also the parent, guardian, master or mistress of any minor who owns such dog, forfeits to the person injured the amount of the damage done, provided the said damage was not occasioned through the fault of the person injured; to be recovered by an action of trespass. P. L. 1909 c. 222, § 10.

Whenever any sheep, lambs, or other domestic animals, owned by a resident of this state are killed or injured by dogs, such owner may make complaint thereof to the mayor of the city or to one of the municipal officers of the town or plantation where such damage was done, within seven days after he has knowledge of the same, and thereupon the municipal officers shall investigate the complaint, and if satisfied that the said damage was committed by dogs within the limits of their city, town or plantation, they shall estimate the damage thereof according to the full value and fifty per cent additional for which they are kept, whether as breeders or for other purposes, and direct that the same shall be paid from the town treasury. If the municipal officers and the owner of the sheep or domestic animals are unable to agree as to the amount of the damage which shall be paid the amount shall be determined by three referees to be

selected in manner following: One referee to be chosen by the municipal officers, one by the owner of the animals injured or killed, and the third by the two referees already selected. In case one party refuses or neglects to select a referee, the other party, after thirty days from the time the notice of the aforesaid damage was given or received, shall select two referees, and the two selected shall choose the third. The said referees shall submit a written report, signed by a majority, within fifteen days from the date of their appointment, stating the amount to be paid by the town. The report of said referees shall be final and the expenses of the referees shall be divided equally between the owner of the animals and the town, city or plantation. Any town paying such damages caused by dogs may maintain an action on the case against the owner or keeper of such dogs to recover the amount paid, not exceeding the actual damage committed and fifty per cent additional. Any person who keeps a dog that kills or injures sheep or lambs shall be fined not less than fifty dollars nor exceeding one hundred dollars and costs unless before the final disposition of the case, the said owner or keeper of the said dog produces satisfactory evidence that the dog has been killed. P. L. 1909 c. 222, § 11.

If any sheep, lambs, or other domestic animals are killed or injured by two or more dogs at the same time, kept by two or more owners or keepers, the said owners or keepers of said dogs shall be jointly and severally liable for such damage. P. L. 1909 c. 222, § 12.

When any city, town, or plantation shall have paid damages to the owners of sheep, lambs, or other domestic animals, as provided in section eleven, for losses caused by dogs, and the amount of such damages cannot be collected from the owners or keepers of said dogs, or the dog or dogs causing such losses cannot be identified, the mayor of such city, or the municipal officers of said town or plantation, shall forward to the state auditor a statement of facts in each case, showing the amount so paid, and the state shall reimburse such city, town or plantation to the amount of such damage from the fund received by said state under section four, and so much as may be necessary is hereby appropriated to pay the same. P. L. 1909 c. 222, § 13.

All money received by the treasurer of state as provided in section four and remaining unexpended at the end of the year shall be credited to the several cities, towns and plantations upon their state tax in proportion to the amount each has paid

into the state treasury under the provisions of this act and so much thereof as remains unexpended as aforesaid, is hereby appropriated to pay the same; *provided, however*, that the amount to be refunded to such plantations that are taxed as wild lands shall be paid direct to the plantation treasurer instead of being credited upon the state tax. P. L. 1909 c. 222, § 14.

Any mayor, selectman, clerk, constable, or police officer who refuses or willfully neglects to perform the duties imposed by the fourteen preceding sections shall be punished by a fine not less than ten nor more than fifty dollars and costs. P. L. 1909 c. 222, § 15.

Whoever steals, injures or confines and secretes any registered dog, or kills any such dog, except as provided in section seventeen of this act, and unless such killing be justifiable in the protection of person, property or game, shall be liable to the owner in a civil action for the full value of the dog. P. L. 1909 c. 222, § 16.

Any person may at any time lawfully kill any dog found hunting or chasing moose, caribou, or deer, or any dog kept and used for that purpose. Any person may lawfully kill a dog which suddenly assaults him or another person when peacefully walking or riding, or is found worrying, wounding, or killing any domestic animal when said dog is outside of the enclosure or immediate care of his owner or keeper. P. L. 1909 c. 222, § 17.

Whoever is so assaulted or finds a dog strolling outside of the premises or immediate care of its keeper, and the said dog is not safely muzzled may, within forty-eight hours thereafter, make written complaint before the municipal or police court having jurisdiction in the city or town where its owner or keeper resides, or in case there is no court, before a trial justice in said town, that he really believes and has reason to believe that said dog is dangerous and vicious, whereupon said court or trial justice shall order said owner or keeper to appear and answer to said complaint by serving said owner or keeper of said dog with a copy of said complaint and order a reasonable time before the day set for the hearing thereon; and if upon hearing, the court or trial justice is satisfied that the complaint is true, he shall order the dog to be killed and the owner or keeper shall pay the costs. P. L. 1909 c. 222, § 18.

If a dog, whose owner or keeper refuses or neglects to comply with said order, wounds any person by a sudden assault as aforesaid, or wounds and kills any domestic animal, the owner or

keeper shall pay the person injured treble damages and costs, to be recovered by an action on the case. P. L. 1909 c. 222, § 19.

Dogs kept in unorganized plantations shall be licensed by their owners or keepers in the oldest adjoining plantation or town. In case there is no adjoining town or plantation, said dogs shall be licensed in the nearest town or plantation. P. L. 1909 c. 222, § 20.

For the purposes of this act, all trial justices, municipal and police courts shall have concurrent jurisdiction with the superior and supreme judicial court. All actions shall be by complaint or indictment unless otherwise specified. All fines imposed shall be paid into the treasury where the offense is committed and shall be used for the benefit of the town unless otherwise provided. P. L. 1909 c. 222, § 21.

Whoever willfully or maliciously kills, wounds, maims, disfigures or poisons any domestic animal, or dog, or exposes any poisonous substance with intent that the life of such animal should be destroyed thereby, shall be punished by imprisonment for not more than four years, or by fine not exceeding five hundred dollars. P. L. 1909 c. 208.

Whoever for the purpose of killing wolves, foxes, dogs or other animals, and not for the destruction of insects or vermin in a building, leaves or deposits in any place any arsenic, corrosive sublimate, nux vomica, strychnine, prussic acid, or any other poison or poisonous substance, shall be fined not less than twenty nor more than fifty dollars, or be imprisoned not less than thirty nor more than sixty days. P. L. 1909 c. 134.

CHAPTER LXXVIII.

BURYING GROUNDS.

Persons of lawful age may incorporate themselves for the purpose of purchasing land for a burying ground, as provided in sections one and two of chapter fifty-seven, and may proceed in the manner and with the powers provided in section three of said chapter. R. S. c. 20, § 1.

Such corporation, within one year after its organization, shall make a substantial fence around the burying ground, and keep

it constantly in repair, under a penalty not exceeding one hundred dollars; which shall be expended under the direction of the municipal officers in keeping the fence in repair. R. S. c. 20, § 2.

Each town, parish, religious society and any individuals, association or corporation to which any ancient or public burying ground belongs, shall keep a substantial fence around it in good repair; and for neglect shall forfeit not exceeding one hundred dollars to be applied as prescribed in the preceding section by such officers of such town, or the officers or committee of such parish or society, or by such individuals, association or corporation. R. S. c. 20, § 3.

If such officers, treasurer or committee, neglect so to apply such fines, they each forfeit the amount thereof, in an action of debt to any person suing therefor. R. S. c. 20, § 4.

When any persons appropriate for a burying ground a piece of land containing not more than half an acre, it shall be exempt from attachment and execution, and inalienable and indivisible by the owners without the consent of all; and be kept fenced or otherwise substantially marked, and occupied as a burying ground; and they shall cause a written description of it, under their hands, attested by two disinterested witnesses, to be recorded in the registry of deeds in the county or district where it lies, or by the clerk of the town where it is situated. R. S. c. 20, § 5.

When a person appropriates for a family burying ground a piece of land containing not more than one-fourth of an acre, causes a description of it to be recorded in the registry of deeds of the same county, or by the clerk of the town where it is situated, and substantially marks the bounds thereof or encloses it with a fence, it shall be exempt from attachment and execution; and no subsequent conveyance of it shall be valid, while any person is interred therein; but it shall remain to him and his heirs as a burial place forever. R. S. c. 20, § 6.

Lots in public or private cemeteries are exempt from attachment and levy on execution, and from liability to be sold by executors and administrators of insolvent estates, for the payment of debts and charges of administration. But only one lot is so exempt for any one person. R. S. c. 20, § 7.

The municipal officers of any town, may on petition of ten voters, enlarge any public cemetery or burying ground or incorporated cemetery or burying ground within their town by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment pub-

lic necessity requires it, *provided*, that the limits thereof shall not be extended nearer any dwelling-house or well from which the water is used for domestic purposes within twenty-five rods, against the written protest of the owner, made to said officers at the time of the hearing on said petition. Nor shall any person, corporation or association establish, locate or enlarge any cemetery or burying ground by selling or otherwise disposing of land, so that the limits thereof shall be extended nearer any dwelling-house or well within twenty-five rods, against the written protest of the owner, *provided*, that nothing in this section shall prohibit the sale or disposition of lots within the limits of any existing cemetery or burying ground, nor the extension thereof away from any dwelling-house or well. R. S. c. 20, § 8.

Notice of a time and place for said hearing shall be given by posting written notices thereof, signed by said officers at least seven days prior thereto, in two public places in said town; and a copy of such notice and of the petition shall be served on the owners of the land at least ten days before the day of hearing. R. S. c. 20, § 9.

If the municipal officers at such hearing grant the prayer of the petitioners, they shall then determine what land shall be taken, and assess the damages suffered by each person thereby, make a written return of their proceedings, specifying the land taken and the damages awarded each person, and file the same with the town clerk; and such cemetery or burying ground shall not be enlarged, pursuant to such return, until so voted by the town at its next annual meeting. R. S. c. 20, § 10.

Any person aggrieved by the amount of damages awarded, may have them determined by written complaint to the supreme judicial court in the manner provided respecting damages for the establishment of town ways. R. S. c. 20, § 11.

Any private cemetery or burying ground, by written agreement of all the owners thereof, recorded by the clerk of the town in which it is situated, may, by vote of such town within one month after the recording of such agreement by the town clerk, become public, and subject to the law relating to public cemeteries or burying grounds; *provided*, that such agreement is not in conflict with the terms of any conveyance or devise of land for the purposes of a burying ground. R. S. c. 20, § 12.

Any city, town, cemetery corporation, trust company or trustee may accept any conveyance of land not exceeding half an acre, to be forever held, kept and used for a private or family

burying ground for the grantors and such of their heirs and relatives by blood or marriage as the conveyance shall designate. Such lot and all erections thereon, including the erection and maintenance of the same, and fixtures thereto suitable for its use or adornment as a burying ground, are forever inalienable and indivisible, and exempt from liability for debt. Such city, town, corporation, company or trustee may also accept and forever hold any donation or legacy for insuring proper care and attention to any burial lot or ground and the avenues thereof and the monuments thereon. Having accepted such donation or legacy, said trustee becomes bound to perform the duties appertaining to the trust as specified in the writing creating the same, or, in default of such specification, as required by law, and as in cases of public charity. Any city or town without giving bond therefor may be appointed by the probate court, testamentary trustee for the purpose of holding forever in accordance with the provisions of this section and the terms of the devise any fund devised for the purposes aforesaid, in any will probated after January one, eighteen hundred and ninety-two. R. S. c. 20, § 13.

Every trust fund authorized by the preceding section shall be safely invested in United States, state, county, city or town securities, or deposited in savings banks; and the annual income only, shall be expended in performance of the requirements of the trust. R. S. c. 20, § 14.

A copy of the record of the vote of the trustee so accepting a conveyance of lands shall be indorsed on the conveyance and certified thereon by the clerk of the grantee, and recorded in the registry of deeds with the conveyance. R. S. c. 20, § 15.

Any person owning or interested in a lot in a public burying ground of a city or town, may deposit with the treasurer of such city or town, a sum of money not exceeding five hundred dollars, for the purpose of providing for the preservation and care of such lot, or its appurtenances, which sum shall be entered upon the books of the treasurer, and held in accordance with the provisions of the ordinances or by-laws of such city or town, in relation to burials. R. S. c. 20, § 16.

A city or town may pass such ordinances or by-laws, as may be necessary for the purposes of the preceding section and not repugnant to law, and may receive such money for said purposes, and may allow interest thereon, at a rate not exceeding six per cent a year. R. S. c. 20, § 17.

When any person owning or interested in a lot in a public

burying ground in a city or town deposits with the treasurer of such city or town, a sum of money for the preservation or care of such lot as provided by the preceding section, said city or town may accept a conveyance of such lot for the uses and upon the trusts which may be set forth in said conveyance, and may bind itself to keep and perform the agreements, uses and trusts contained in the deed of conveyance of such lot. R. S. c. 20, § 18.

Any seven or more persons may be incorporated in the manner provided in sections one and two of chapter fifty-seven, for the purpose of owning, managing and protecting lands and their appurtenances appropriated for public cemeteries; and the property of such corporations and the shares of stock therein, are exempt from attachment and taxation. R. S. c. 20, § 19.

Deeds of burial lots in any public cemetery may be recorded in the registry of deeds for the county or district where such cemetery is situated. R. S. c. 20, § 20.

Whoever willfully destroys, or injures any tomb, gravestone, monument, or other object placed or designed as a memorial of the dead, or any fence, railing, or other thing placed about or inclosing a burial place; or willfully injures, removes, or destroys any tree, shrub, or plant within such inclosure, shall be punished by imprisonment for less than one year, or by fine not exceeding five hundred dollars. R. S. c. 125, § 33.

If an officer takes the body of a deceased person by writ or execution, he shall be punished by fine not exceeding five hundred dollars, and by imprisonment for not more than six months. R. S. c. 125, § 31.

Whoever, without permission of the board of health, municipal officers, or overseers of the poor of a town, therein willfully digs up or removes any human body or its remains from its place of burial, or aids in so doing; knowingly receives, conceals, or disposes of the same, or unnecessarily and indecently exposes, throws away, or abandons a human body or its remains in any public place, river, stream, or elsewhere, shall be punished by imprisonment for not less than one nor more than five years, or by fine not exceeding three thousand dollars; but any physician, surgeon, or medical student may have in his possession or use human bodies, or parts thereof lawfully obtained, for anatomical or physiological investigation and instruction. R. S. c. 125, § 32.

CHAPTER LXXIX.

DEAD HUMAN BODIES.

If any resident of the state, requests or consents that after his death, his body may be delivered to a regular physician or surgeon, for the advancement of anatomical science, it may be used for that purpose, unless some kindred or family connection makes objection. R. S. c. 17, § 1.

The professors of anatomy, the professors of surgery and the demonstrators of anatomy in the medical schools of the state, which are now or may hereafter become incorporated by act of the legislature, shall be and are hereby constituted a board for the collection, distribution and delivery of dead human bodies hereinafter described, to and among such persons as under the provisions of this chapter are entitled thereto. The said board shall have full power to establish rules and regulations for its government, and to appoint and remove officers, and shall keep full and complete minutes of its transactions, and records shall also be kept under its direction of all bodies received and distributed by said board, and of the persons to whom the same are distributed, which minutes and records shall be open at all times to the inspection of each member of said board, the attorney general and the county attorney of any county within the state. R. S. c. 17 § 2.

All public officers, agents and servants of any and every county, city, town and other municipality, and of any and every almshouse, prison, morgue, hospital or any other public institution having charge or control over dead human bodies required to be buried at the public expense, are hereby required to notify immediately the said board of distribution, or such person or persons as may from time to time be designated by said board, or its duly authorized officer or agent, whenever any such body or bodies come into his or their possession, charge or control, and shall, without fee or reward, deliver such body or bodies to said board, or its duly authorized officer or agent, and permit and suffer the board or its agents, or the physicians and surgeons from

time to time designated by it or them, who comply with the provisions of this chapter, to take and remove any and all such bodies to be used within the state for the advancement of medical education; but no such notice need be given and no such body shall be delivered, if any person, satisfying the authorities in charge of said body that he or she is a member of the family of or next of kin to the deceased, shall claim the body for burial, but it shall be surrendered to him or her for interment, and no notice shall be given and no body delivered to said board or its agents, if such deceased person was a traveler and not a vagabond, who died suddenly, in which case the said body shall be buried. R. S. c. 17, § 3.

Said board or its duly authorized agent may take and receive such bodies, so delivered as aforesaid, and shall upon receiving them after seven days from the date of decease distribute and deliver them to or among the schools, physicians and surgeons aforesaid in the following manner. Those schools needing bodies for lectures and demonstrations shall first be supplied as fast as practicable, the number assigned to each to be based upon the number of students in actual attendance, which number shall be returned to the board at such times as it shall direct. The board of distribution may from time to time designate physicians or surgeons who shall receive said bodies, applications to be considered in the order of their receipt by said board. R. S. c. 17, § 4.

The said board may employ a carrier or carriers for the conveyance of said bodies, and the said bodies shall be well enclosed within a suitable encasement, and carefully deposited free from public observation. Said carrier shall obtain receipts by name, or, if the deceased is unknown, by a description, for each body delivered by him, which receipt shall state the source from which said body was received, and shall deposit said receipts with the secretary of said board. R. S. c. 17, § 5.

No school, physician or surgeon shall be allowed or permitted to receive any such body or bodies until a bond shall be given to the treasurer of state by such physician or surgeon, or by and in behalf of such school, to be approved by a justice of a court of record in and for the county in which such physician or surgeon resides, or in which such school is situated; such bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or the said school shall receive thereafter shall be used only for the promotion of medical education within the state, and, when no

longer needed for such educational purposes, shall be decently buried; said bond shall be examined annually in the month of December, by the treasurer of state, and he shall certify in writing upon each bond in his possession, his approval of the same; in case any bond is not approved by him, he shall immediately notify the party giving the same, who shall forthwith file a new bond as hereinbefore provided; whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey such body or bodies to any place outside of the state, or cause the same to be done, shall be liable to a fine not exceeding two hundred dollars, or to imprisonment for not more than one year. R. S. c. 17, § 6.

Neither the state nor any county or municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body, but all the expenses thereof, and of said board of distribution, shall be paid by those receiving the bodies, in such manner as shall be specified by said board of distribution. R. S. c. 17, § 7.

Any person having duties enjoined upon him by the provisions of the six preceding sections, who shall neglect, refuse or omit to perform the same as required by the provisions of said sections, shall, on conviction thereof, be liable to a fine of not less than one hundred, nor more than five hundred dollars for each offense. R. S. c. 17, § 8.

Whoever, without permission of the clerk of a town, therein willfully digs up or removes any human body or its remains from its place of burial, or aids in so doing; knowingly receives, conceals or disposes of the same, or unnecessarily and indecently exposes, throws away or abandons a human body or its remains in any public place, river, stream or elsewhere, shall be punished by imprisonment for not less than one, nor more than five years, or by fine not exceeding three thousand dollars; but any physician, surgeon or medical student, may have in his possession or use human bodies or parts thereof lawfully obtained, for anatomical or physiological investigation and instruction. R. S. c. 125, § 32.

Except as provided in section twenty-three of chapter sixty-one of revised statutes, no interment or disinterment of the dead body of any human being, or disposition thereof in any tomb, vault or cemetery, shall be made without a permit as aforesaid, from the clerk of the town or city where said person died, or in case of disinterment, is buried, nor otherwise than in accordance

with such permit. No undertaker or other person shall assist in, assent to or allow any such interment or disinterment to be made, except as provided in section twenty-three, until such permit has been given as aforesaid; and every undertaker or other person having charge of any burial place as aforesaid, who shall receive such permit, shall preserve and return the same to the clerk of the town in which the death occurred within six days after the day of burial. P. L. 1909, c. 75, § 4, amending R. S. c. 61, § 28.

The town or city clerk may appoint two suitable and proper persons, in each town or city, as sub-registrars, who shall be authorized to issue burial permits based upon a death certificate, as hereinbefore provided, in the same manner as is required of the town or city clerk; and the said death certificate, upon which the permit is issued shall be forwarded to the town clerk within six days after receiving the same, and all permits by whomsoever issued shall be returned to the town clerk as required by section twenty-eight. The appointment of sub-registrars shall be made with reference to locality, so to best suit the convenience of the inhabitants of the town, and such appointment shall be in writing and recorded in the office of the town or city clerk, and the sub-registrars in any town shall hold office at the pleasure of the town clerk. P. L. 1909, c. 75, § 5.

CHAPTER LXXX.

EMPLOYMENT AGENCIES.

No person shall open, keep or carry on any employment agency unless he shall first procure from the municipal officers of the city or town where said agency is to be located a license for the same, which license shall be issued by the municipal officers upon the payment of twenty dollars for the use of said city or town. Such license shall be signed by one or more of the municipal officers and shall be issued for the term of one year from its date and shall apply only to the person to whom it is issued. P. L. 1907 c. 84, § 1.

Every person applying for a license as provided in the preceding section shall file with the said municipal officers a bond in

favor of the inhabitants of the city or town wherein such application is made in the sum of five hundred dollars, with surety approved by the municipal officers, conditioned that the obligor shall not violate any of the provisions of this act. The municipal officers are hereby given authority, after such notice and hearing as they may deem necessary, to revoke the license of any person, when, in their judgment, said licensed person has violated any of the provisions of this act. The decision of the municipal officers shall be final. P. L. 1907 c. 84, § 2.

Every licensed person shall give to each applicant for employment from whom a fee or other valuable thing shall be received for procuring such employment, which fee or other valuable thing shall in no case exceed the value of one dollar, said fee being in full compensation for all services of said licensed person, a receipt in which shall be stated the name of the applicant, the amount of the fee or other valuable thing, the date, the name or nature of the employment or situation to be procured and a separate receipt in which shall be stated the name and address of the person, firm or corporation, to whom the applicant is referred or sent for work or employment. If the applicant does not obtain a situation or employment through the agency of such licensed person, without fault on the part of said applicant, within six days after the application as aforesaid, said employment agency shall return to the said applicant on demand the full amount of fee or other valuable thing so paid and delivered by said applicant to said licensed person. If a person procuring a position through the agency, as aforesaid, is discharged from his employment within six days after entering therein, without cause or if he shall leave said employment within said six days without fault on the part of the employer, the amount paid to said agency by either the employer or the employee, shall be returned to the party paying the same, upon demand made within ten days after said employee ceases to labor, provided the party claiming said return shall be the one without fault. Said employment agency shall exhibit in a public and conspicuous place in his place or office the license which he has obtained from the municipal officers of the city or town wherein said agency is established. P. L. 1907 c. 84, § 3.

The term "person" in this act shall include persons, company, society, association, firm or corporation and the term "employment agency" shall include the business of keeping the intelligence office, employment bureaus or other agencies by procuring work or employment for persons seeking employment, or for act-

ing as agent for procuring such work or employment where a fee or other valuable thing is exacted, charged or received, or for procuring or assisting to procure employment, work or a situation of any kind or for procuring or providing hereby for any person. P. L. 1907 c. 84, § 4.

This act shall not apply to the employment of seamen, nor shall the provisions of sections two and three hereof apply to teachers' agencies. P. L. 1909 c. 13, § 5.

Whoever violates any of the provisions of this act shall be fined not less than ten or more than one hundred dollars to be recovered by complaint or indictment for the use of the state. P. L. 1909 c. 13, § 7.

No license shall be granted to a person who is directly or indirectly engaged in or interested in the sale of intoxicating liquors. R. S. c. 37, § 6.

CHAPTER LXXXI.

ENGINES.

No stationary, gasoline or steam engine shall be erected in a town until the municipal officers have granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provision as to height of chimney or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license shall be granted on written application, recorded in the town records, and a certified copy of it furnished, without charge, to the applicant. R. S. c. 22, § 18; 65 Me. 426, 435; 80 Me. 488; 75 Me. 378.

When application is made for such license, said officers shall assign a time and place for its consideration, and give at least fourteen days' public notice thereof, in such manner as they think proper, at the expense of the applicant. Any person aggrieved by the decision of the selectmen of towns, in granting or refusing such license, may appeal therefrom to the next term of the supreme judicial court held in said county, which court

may appoint a committee of three disinterested persons, as is provided in relation to appeals from location of highways. Said committee shall be sworn and give fourteen days' notice of the time and place of their hearing to the parties interested, view the premises, hear the parties, and affirm, reverse or annul the decision of said selectmen, and their decision shall be final. Pending such appeal from granting such license, the supreme judicial court in equity may enjoin the erection of such building and engine. R. S. c. 22, § 19; 80 Me. 488.

Any such engine erected without a license shall be deemed a common nuisance without other proof than its use. R. S. c. 22, § 20; 65 Me. 435; 75 Me. 378; 80 Me. 490.

Said officers have the same authority to abate and remove an engine, erected without license, as is given to the local board of health or health officer in chapter eighteen of the revised statutes. R. S. c. 22, § 21; 65 Me. 435; 75 Me. 379.

No person or corporation shall manufacture, sell, use, or cause to be used except as hereinafter provided, any steam boiler in this state unless it is provided with a fusible safety plug, made of lead for boilers carrying steam pressure above fifty pounds per square inch, and of tin for boilers carrying steam pressure of fifty pounds and less per square inch, and said safety plug shall be not less than one-half inch in diameter, and shall be placed in the roof of the fire box when a fire box is used, and in all cases shall be placed in the part of the boiler fully exposed to the action of the fire, and as near the surface line of the water as good judgment shall dictate, excepting in cases of upright tubular boilers, when the upper tube sheet is placed above the surface line of the water, which class of boilers shall be exempted from the provisions of this section. R. S. c. 22, § 22.

CHAPTER LXXXII.

EXPLOSIVES AND FIREARMS.

In every town, the municipal officers may make regulations, in conformity to which shall be kept in the town or transported from place to place all gunpowder, petroleum, coal oils, burning fluids, naphtha, benzine and all other explosive and illuminating

substances which such officers adjudge dangerous to the lives or safety of citizens; and no person shall keep any such article in any quantity or manner, than is prescribed in such regulations, under a penalty of not less than twenty nor more than one hundred dollars for each offense; all such articles may be seized by any of said officers as forfeited; and within twenty days after such seizure may be libeled according to law. R. S. c. 28, § 20.

If any person manufactures gunpowder, or mixes or grinds the composition therefor, in any building within eighty rods of any valuable building not owned by such person or his lessor, which was erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly. R. S. c. 22, § 9.

Whoever sells, or offers for sale crackers, squibs, rockets or other fireworks, or fires or throws the same in any town, without the license of the municipal officers thereof, shall be fined not exceeding ten dollars, to the use of such town. R. S. c. 129, § 18.

Whoever has in his possession a toy pistol for the explosion of percussion caps or blank cartridges, with intent to sell it, or sells or offers to sell or give it away, shall be fined not less than five, nor more than one hundred dollars, and shall be liable for all damages resulting from such selling or giving away, to be recovered in an action on the case. R. S. c. 129, § 19.

It shall not be lawful for any person or persons to sell any gunpowder, which may at the time be within the city of Portland, in any quantity, by wholesale or retail, without having first obtained from the mayor and aldermen of said city, a license to sell gunpowder; and every license shall be written or printed, and duly signed by the mayor, on a paper, upon which shall be written or printed a copy of the rules and regulations established relative to keeping, selling and transporting gunpowder within the said city; and every such license shall be in force for one year from the date thereof, unless annulled by the mayor and aldermen, and no longer; but such license may, prior to its expiration, be renewed by an endorsement thereon by the mayor for the further term of one year, and so from year to year; *provided, always*, that the mayor and aldermen may rescind or annul any such license, if, in their opinion, the person or persons licensed have disobeyed the law, or infringed any rule or regulation established by the mayor and aldermen. P. L. 1833, c. 337, § 1.

Every person who shall receive a license to sell gunpowder, as aforesaid, shall pay for the same to the treasurer of the city, the sum of five dollars, and every person on having a license renewed, shall pay to said treasurer the sum of one dollar. And any person or persons licensed to keep and sell gunpowder, as aforesaid, shall place and constantly keep in a conspicuous place over or at the side of the front door of the building in which powder is kept for sale, a sign, on which shall be inscribed in plain, legible letters, the words following, viz.: "Licensed to keep and sell gunpowder." P. L. 1833, c. 337, § 2.

The mayor and aldermen of the city of Portland are authorized to make and establish rules and regulations, from time to time, relative to the times and places at which gunpowder may be brought to or carried from said city, by land or water, and the time and manner in which the same may be transported through said city, and prescribe the kind of carriage, boat or vehicle, in which the same may be brought to, transported through, or carried from said city. *Provided, however,* that said rules and regulations shall not be applied to any person or persons, excepting inhabitants of the city of Portland, until personal notice shall have been given of the existence of said rules and regulations. P. L. 1833, c. 337, § 3.

If any gunpowder, kept contrary to the provisions of this act, or contrary to the terms and conditions of any such license, or to any rules and regulations established or to be established, by the mayor and aldermen, as aforesaid, shall explode in any shop, store, dwelling-house, warehouse, or other building, or in any other place in said city, the tenant, occupant, or owner of said shop, store, dwelling-house, warehouse, or other building or place, shall pay a fine of not less than fifty nor more than three hundred dollars, one moiety thereof to the use of the poor of said city, and the other moiety to the use of the person who may sue therefor, to be recovered by action of debt. P. L. 1833, c. 337, § 4. See laws of nineteen hundred and nine, chapter fifty-two, authorizing the governor to prevent the use of firearms in forests during dry seasons.

It shall be unlawful for any person to sell, offer for sale, use or have in his possession, any gun, pistol or other firearm, fitted or contrived with any device for deadening the sound of explosion. Whoever violates any of the provisions of this act shall forfeit such firearm or firearms and the device or silencer, and shall further be subject to a fine not exceeding one hundred dol-

lars, or to imprisonment not exceeding sixty days, or to both fine and imprisonment. Any sheriff, deputy sheriff, constable, inland fish and game warden or deputy inland fish and game warden shall have authority to seize any firearm or firearms and any device or silencer found in possession of any person in violation of this act, and on conviction of the party from whom such firearm or firearms are seized, such firearm or firearms shall be sold, the proceeds to be paid to the state treasurer, and the device or silencer shall be destroyed. P. L. 1909 c. 129, § 1.

This act does not apply to military organizations authorized by law to bear arms, or to the national guard in the performance of its duty. P. L. 1909 c. 129, § 2.

In all prosecutions arising under this act, municipal and police courts and trial justices in their respective counties shall have upon complaint original and concurrent jurisdiction with the supreme judicial and the superior courts, and all fines, penalties and forfeitures recovered by any person for any violation of this act shall be paid forthwith by the person receiving the same to the state treasurer, to be credited to fines and license fees for the protection of birds and game. P. L. 1909, c. 129, § 3.

CHAPTER LXXXIII.

FENCES AND COMMON FIELDS.

All fences four feet high and in good repair, consisting of rails, timber, boards, stone walls, iron or wire, and brooks, rivers, ponds, creeks, ditches and hedges, or other things which in the judgment of the fence viewers having jurisdiction thereof are equivalent thereto, are legal and sufficient fences; *provided, however*, that no barbed wire fence shall be accounted legal and sufficient, unless it is protected by an upper rail or board of wood, and no division fence built after March twenty-six, eighteen hundred and ninety-seven within thirty rods of any dwelling-house in the construction of which barbed wire is used, shall be accounted legal and sufficient, except by mutual written consent of the adjoining owners. R. S. c. 26, § 1.

The occupants of lands inclosed with fences shall maintain partition fences between their own and the adjoining inclosures

in equal shares, while both parties continue to improve them. R. S. c. 26, § 2.

If any party neglects or refuses to repair or rebuild any such fence, which he is legally required to maintain, the aggrieved party may complain to two or more fence viewers of the town where the land is situated, who, after due notice to such delinquent, shall proceed to survey it, and if they determine that it is insufficient, they shall signify it in writing to the delinquent occupant, and direct him to repair or rebuild it within such time as they judge reasonable, not exceeding thirty days. If the fence is not repaired or rebuilt accordingly, the complainant may make or repair it. R. S. c. 26, § 3.

Form of Complaint.

To A. B. and C. D., fence viewers of the town of ———, in the county of ———:

Complains E. F., of said ———, that G. H., the occupant of a tract of land adjoining that improved by your complainant, has failed to build and repair that part of the fence between our respective adjoining inclosures which of right he ought to maintain, which portion of fence, heretofore divided between us, begins at ——— and ends at ———. Wherefore your complainant prays that you would, after notice, proceed to survey the same, and further to do what justice and law require.

Dated at ———, this ——— day of ———, 19—.

E. F.

Form of Notice to Repair, after Survey, by the Fence Viewers.

To G. H., of ———, in the county of ———:

Whereas complaint has been made to us, the subscribers, fence viewers of the town of ———, in said county, on the ———, by E. F., of said ———, to survey the fence between the land of E. F. and yourself, situate in said ———, beginning at ——— and ending at ———, which has been heretofore divided between you; upon which complaint we appointed ———, the ——— day of ———, at ——— o'clock A. M., at the ———, as the time and place of hearing, and caused you to be duly notified thereof; and having attended and examined said fence, and heard the parties and their evidence, we determine that the part of said fence, beginning at ——— and ending at ———, which you are bound to keep in repair, is insufficient; and direct you to cause the same to be put in good repair within thirty days from the date hereof.

Given under our hand, this ——— day of ———, A. D. 19—.

J. K., {
L. M., } *Fence Viewers of ———.*

When the complainant has completed such fence, and after notice given, it has been adjudged sufficient by two or more of

the fence viewers, and the value thereof, with the fence viewers' fees, certified under their hands, he may demand of the occupant or owner of the land, where the fence was deficient, double the value and fees thus ascertained; in case of neglect or refusal for one month after demand, he may recover the same by an action on the case, with interest at the rate of one per cent a month, and if the delinquent owner or occupant repairs or rebuilds such fence without paying the fees of the fence viewers, certified by them, double the amount thereof may be recovered by the complainant as herein provided. R. S. c. 26, § 4.

When the occupants or owners of adjacent lands disagree respecting their rights in partition fences and their obligation to maintain them, on application of either party, two or more fence viewers of the town where the lands lie, after reasonable notice to each party, may in writing under their hands assign to each his share thereof, and limit the time in which each shall build or repair his part of the fence, not exceeding thirty days. Such assignment and all other assignments of proprietors of partition fences herein provided for, recorded in the town clerk's office, shall be binding upon the parties, and they shall thereafter maintain their part of said fence. If such fence has been built and maintained by the parties in unequal proportions, and the fence viewers adjudge it to be good and sufficient, they may, after notice as aforesaid, in writing under their hands, award to the party who built and maintained the larger portion, the value of such excess, to be recovered in an action on the case against the other party, if not paid within six months after demand. Parties to assignments under the provisions hereof shall pay the fees of the fence viewers certified under their hands, in equal proportions, and if either party neglects to pay his proportion within one month after demand, the party applying to the fence viewers may pay the same and recover of said delinquent party, in an action on the case, double the amount of his said proportion thereof. R. S. c. 26, § 5.

Form of Notice.

To Mr. ———, of the town of ——— :

Whereas ——— has made application to us, fence viewers of the town of ———, stating that a disagreement has arisen between him and you respecting your rights in and your obligations to maintain a partition fence between your land and the land of said ———; we therefore notify you that we shall be at ———, on the ——— day of ———, at ——— o'clock, to assign to each party his share of said fence, at which time and place you will attend.

Dated at ———, 19—.

N. O., { *Fence Viewers.*
P. O., }

Form of Assignment.

Whereas a disagreement has arisen between A. B., of —, and C. D., of —, respecting their rights in a partition fence and obligation to maintain the same; and whereas we, the subscribers, fence viewers of the town of —, upon application to us by said —, have given reasonable notice to each party to attend at the time and place when and where the assignment should be made; wherefore, having viewed the premises, we do hereby assign to each of said parties his share of said fence, to wit:

The said — shall —, etc.

Given under our hands, this — day of —, 19—.

R. S., } *Fence Viewers.*
T. U., }

If any party refuses or neglects to build and maintain the part thus assigned him, it may be done by the aggrieved party; who is entitled to double the value and expenses, to be ascertained, and recovered as provided in section four, and shall have a lien therefor on the land owned or occupied by the party neglecting or refusing to build or maintain the partition fence assigned to him by the fence viewers, to be enforced by attachment made within one year from the day of division by them. R. S. c. 26, § 6.

All division fences shall be kept in good repair throughout the year, unless the occupants of adjacent lands otherwise agree. R. S. c. 26, § 7.

When in the opinion of the fence viewers having jurisdiction of the case, it is, by reason of natural impediments, impracticable or unreasonably expensive to build a fence on the true line between adjacent lands, and the occupants disagree respecting its position, on application of either party as provided in section five, and after notice to both parties, and a view of the premises, they may determine, by a certificate under their hands communicated to each party, on which side of the true line, and at what distance, or whether partly on one side and partly on the other, and at what distances, the fence shall be built and maintained, and in what proportion by each party; and either party may have the same remedy against the other, as if the fence were on the true line. R. S. c. 26, § 8.

When adjacent lands have been occupied in common without a partition fence, and either party desires to occupy his in severalty, or when it is necessary to make a fence running into the water, and the parties liable to build and maintain it disagree, either party may apply to the fence viewers of the town, who shall proceed as in section five; except that the fence viewers

may allow longer than thirty days for building the fence, having regard to the season of the year. In other respects the remedy shall be as there provided. R. S. c. 26, § 9.

When one party ceases to improve his land, or lays open his inclosure, he shall not take away any part of his partition fence adjoining the next inclosure improved, if the owner or occupant thereof will pay therefor what two or more fence viewers, on due notice to both parties, determine to be its reasonable value. R. S. c. 26, § 10.

Form of an Appraisement of the Value of Such Partition Fence.

We, the subscribers, fence viewers of the town of —, at the request of —, to appraise his part of a partition fence, on land adjoining the inclosure of —, which he has ceased to improve, have given due notice to both parties, and do determine the reasonable value thereof to be —.

Dated the — day of —, 19—.

V. W., } *Fence Viewers.*
X. Y., }

When any land, which has been uninclosed, is afterwards inclosed, or used for pasturing, its occupant or owner shall pay for one-half of each partition fence on the line between his land and the inclosure of any other occupant or owner, and its value shall be ascertained in writing; if the parties do not agree, by two or more of the fence viewers of the town where such fence stands; and after the value is so ascertained, on notice to such occupant or owner, if he neglects or refuses for thirty days, after demand, to pay it, the proprietor of the fence may have an action on the case for such value and the cost of ascertaining it. R. S. c. 26, § 11.

If the line on which a partition fence is to be made or to be divided, is the boundary between two or more towns, or partly in one town, and partly in another, a fence viewer shall be taken from each town. R. S. c. 26, § 12.

When a fence between owners of improved lands is divided either by fence viewers, or by the written agreement of the parties recorded in the town clerk's office where the land lies, the owners shall erect and support it accordingly; but if any person lays his lands common, and determine not to improve any part of them adjoining such fence, and gives six months' notice to all occupants of adjoining lands, he shall not be required to maintain such fence while his lands so lie common and unimproved. But all partition fences divided by parol agreement and actually built in pursuance of such agreement, including

fences so built heretofore, shall be deemed legal fences as if divided by fence viewers or written agreement, and the adjoining owners shall support their respective portions of fence under such agreement, until otherwise ordered by the fence viewers, on application to them by either party. And when a party has constructed his part of a fence in pursuance of a parol or written agreement or assignment of fence viewers, no assignment shall thereafter be made by fence viewers, depriving him of the full value of such fence or any part thereof. R. S. c. 26, § 13.

Nothing herein extends to house lots, the contents of which do not exceed half an acre; but if the owner of such lot improves it, the owner of the adjacent land shall make and maintain one-half of the fence between them, whether he improves or not; nor does this chapter make void any written agreement respecting partition fences. R. S. c. 26, § 14.

When several lots or pieces of land are inclosed and fenced in one common field, or when all the proprietors of such lands agree to inclose them in that manner, said proprietors may hold regular meetings when they adjudge proper, make such rules for managing their common concerns, and adopt such equitable modes of improvement as their common interest requires; but in all other respects each proprietor may, at his own expense, inclose, manage and improve his own land as he thinks best, maintaining his proportion of fence inclosing the general field. R. S. c. 26, § 15.

Upon application of any two or more proprietors to any justice of the peace, he shall issue his warrant to one of the applicants, or to the clerk of the proprietors, requiring him to call a meeting of the proprietors, and expressing in the warrant the time, place and purpose thereof. R. S. c. 26, § 16.

Notice of the meeting shall be served at least fourteen days previous to the time appointed, when all the proprietors reside in the town where the land lies, by reading the warrant to each proprietor, or giving him a copy in hand, or by leaving it at his usual place of abode, if the proprietors have not been previously organized for said purpose, or if no other mode of notice has been fixed by their standing rules; and in such case if one or more of the proprietors reside without the town or plantation, notice shall be given to them by publishing a copy of said warrant in some newspaper printed in the county, or in the state paper, three weeks successively, the last publication to be at least fourteen days before the time appointed. When the stand-

ing rules of the proprietors determine the mode of serving notices for their meetings, it may be observed in service of said warrant, at the election of the party serving it. R. S. c. 26, § 17.

At all meetings of the proprietors, each may vote according to the relative amount or value of his interest, if known; if not, they shall all vote equally, and absent proprietors may vote by written proxy. R. S. c. 26, § 18.

They may raise money from time to time for defraying their common charges and for managing their affairs, which sum shall be assessed upon the several proprietors, in proportion to their interests, by their assessors; and any person aggrieved by such assessment may apply to the county commissioners, who may abate his part of it in whole or in part, if they see cause. R. S. c. 26, § 19.

They may, at their annual or other meeting, duly notified, choose a clerk, three or five assessors, a collector, and such other officers as they find necessary, to continue in office until removed by them, or others are chosen and qualified in their stead. The clerk and assessors shall be sworn. R. S. c. 26, § 20.

Such clerk shall issue his warrant to the collector, requiring him to collect all money so assessed, and to pay it over to the clerk or other proper officer according to the orders of the proprietors; and the collector shall collect it as collectors of towns are authorized to collect town taxes. R. S. c. 26, § 21.

The whole fence inclosing such general field, so far as convenient, shall be apportioned among the proprietors according to the number of acres held and cultivated or otherwise used by each; and the part to be maintained by each shall be set out and assigned to him by any two or more fence viewers of the town, unless the proprietors agree on an apportionment of the fence among themselves. The proportion of fence so assigned to each shall be recorded by the clerk, in the books of the proprietors; and if there is no such clerk, by the clerk of the town, on the town records. R. S. c. 26, § 22.

If any proprietor in such general field declines to cultivate his land, or to use it for pasturing, and gives written notice of his intention to the clerk of the proprietors, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land while he neglects to cultivate or use it as aforesaid. R. S. c. 26, § 23.

The expense of apportioning the fence, and of making and maintaining such part thereof as cannot conveniently and justly

be assigned to any one proprietor, shall be borne by all the proprietors, to be taxed in proportion to their interests; and the part assigned to each shall be made and maintained by him while he uses his part of the general field for pasturing, planting, mowing or otherwise. R. S. c. 26, § 24.

If any part of the fence assigned to a proprietor becomes deficient, and he does not repair it within three days after notice of such deficiency given to him or his tenant by a fence viewer of the town, it may be repaired by any other proprietor; and such repairs may be examined by any two or more fence viewers, and if adjudged by them, after notice, to be sufficient, they shall ascertain the cost thereof, and make a statement of the same, and of the amount of their fees, in writing under their hands. R. S. c. 26, § 25.

The person making such repairs may demand of the deficient proprietor, or of his tenant, double the costs of such repairs and the fees thus ascertained; and if not paid within one month after notice and demand, he may recover them in an action on the case. R. S. c. 26, § 26.

If part of the fence is suddenly blown down, or carried away by a flood or tempest, and the crops in the field are thereby exposed to immediate destruction or injury, the proprietor to whom it was assigned shall repair it within twenty-four hours after notice thereof given him by a fence viewer. If he fails so to do, it may be repaired by any other proprietor; and he may recover double the cost thereof, and fees, as provided in the preceding section. The fence viewers may allow a longer time than twenty-four hours, if they think proper. R. S. c. 26, § 27.

If a proprietor violates the regulations of the proprietors, either by putting into the common field more horses, cattle or other beasts than the number allotted him, or before the day fixed for that purpose, or by keeping them therein longer than the time limited, he is a trespasser. R. S. c. 26, § 28.

If a proprietor is injured in his lands by the beasts of a stranger, he has the same remedy therefor as if his land had been inclosed and used separately. When damage happens to a proprietor through the insufficiency of the fence of a co-proprietor, said co-proprietor or the occupant of his land shall pay it. R. S. c. 26, § 29.

Every proprietor of land lying unfenced in a general field shall once in every two years, if requested by the owner of the adjoining land, run lines with him between their lots, and estab-

lish boundaries by sufficient mete stones, at their joint expense ; and if he fails so to do, after at least six days' notice, he forfeits two dollars, to be recovered by such adjoining owner in an action on the case. R. S. c. 26, § 30.

A major part in interest in any common or general field, at any legal meeting called for the purpose, may discontinue their association ; but not to take effect until six months after the vote for that purpose, unless all the proprietors consent to an earlier period. R. S. c. 26, § 31.

Nothing contained in this chapter shall prevent the proprietors of any such common field fenced, who had been duly organized previous to February twenty-four, eighteen hundred and twenty-one, from making and maintaining their fences according to rules and orders before that date agreed on by them at any legal meeting. R. S. c. 26, § 32.

Portions of common fields inclosed under the provisions hereof, which are unoccupied and unimproved by their owners on account of rocks or barrenness, shall be excluded in all estimates for assessments under section nineteen, or for apportionments of fence under section twenty-two. R. S. c. 26, § 33.

Any three or more proprietors of lots within one general fence or inclosure, by a petition in writing to the proprietors of such field, at any meeting thereof, legally warned for that purpose, may request to have their lots, either alone, or jointly with any other lots therein, divided from the remainder, to be inclosed by one common fence, and occupied by them as an entire field separately from the other proprietors of the general field ; and if the majority of the proprietors in interest present at such meeting, refuse their assent to such division, the county commissioners may, upon like application, appoint three or five disinterested and suitable persons within the county where such general field is situated, to make such divisions thereof, if they deem it expedient ; and to assign to each field its proportion of the partition fence which shall become necessary by reason of such division, to be kept up and maintained by each proprietor of said general field ; and such persons shall, as soon as may be after their appointment, make return of their doings under their hands to such commissioners ; and after the acceptance thereof by them, the fields so divided shall be deemed separate general fields, and the proprietors of the field so set off and the remaining proprietors of the original general field shall be distinct and separate proprietary bodies, having all the like powers and privileges, and

subject to all the duties and liabilities, as the proprietors of the original general field before such division was made; but no order for such division shall be made, nor any committee appointed as aforesaid, until the other proprietors have had notice of the petition for such division; which shall be given by serving the clerk of the proprietors with a copy of the petition, thirty days at least before such order or appointment is made. R. S. c. 26, § 34.

When the major part in interest of the proprietors of any tract of land consisting of five or more allotments desire to inclose them in one general field they may apply to the supreme judicial court in the county where such land lies, and when it lies in different counties, then to such court held in either; and the court may order such notice to all parties interested, as it deems reasonable, and, after a hearing, may order the land to be so inclosed. R. S. c. 26, § 35.

After a common or general field is so established by order of court, further proceedings in relation thereto shall be the same as are provided when a field is so inclosed by the consent of all the proprietors; and the proprietors shall be entitled to all the privileges, and subject to all the duties, before provided with respect to the proprietors of fields inclosed by consent. R. S. c. 26, § 36.

Any fence viewer, who, when requested, unreasonably neglects to view any fence, or to perform any other duties herein required of him, forfeits three dollars to any person suing therefor within forty days after such neglect, and is liable for all damages to the party injured. R. S. c. 26, § 37.

Each fence viewer shall be paid by the person employing him at the rate of two dollars a day for the time employed. If the party liable neglects to pay the same for thirty days after demand, each fence viewer may recover double the amount in an action on the case. R. S. c. 26, § 38.

In relation to partition fences, the power of the fence viewers extends only to the assignment of the respective portions of the dividing line, and to the fixing of the time within which to build the fence. Further orders and adjudications, being unauthorized by statute, are of no effect. Thus an order (however equitable under the circumstances) that one of the adjoining owners should build a fence upon a portion of the line assigned to the other, and exonerating the latter from building upon such portion, creates no obligation upon the former, nor relieves the latter from

the duty imposed by statute, to build the fence upon that portion of the line. 34 Me. 332.

Time allowed for building fence must be definitely stated. 60 Me. 557.

Within twelve days from receiving this notice is too indefinite. *Ib.*

Party seeking to recover must show that he has built whole of the part assigned to him. 78 Me. 242.

Notice to meet on a day named unless very stormy, and, if very stormy, on the next pleasant day following, except Sunday, is not a good notice. And action in pursuance of such notice is invalid unless all parties were present. 87 Me. 116.

Fence viewers should declare in their adjudication that the fence built by the person seeking to recover, was sufficient. 68 Me. 535; 87 Me. 116.

CHAPTER LXXXIV.

FENCES.

When buildings or fences have existed more than twenty years fronting upon any way, street, lane or land appropriated to public use, the bounds of which cannot be made certain by records or monuments, such buildings or fences shall be deemed the true bounds thereof. When the bounds can be so made certain, no time less than forty years will justify their continuance thereon, and on indictment and conviction they may be removed. Persons owning lands beside a highway or town way, on which are buildings or fences that encroach within the limits of said way, may by a writing under seal, by them signed and acknowledged, and recorded in the registry of deeds for the county in which the land lies, admit to the municipal officers of the town in which said way exists, the true bounds or limits of said way, and the extent of their wrongful occupancy thereof. And thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits, for the full term of

forty years from the date of such deed. R. S. c. 23, § 90; 82 Me. 391; 83 Me. 508; 85 Me. 419; 90 Me. 333.

There shall be furnished and kept in repair in each section of the town, through which there is a mail route, some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of ten feet, and the municipal officers of towns, or any road commissioner under their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein; but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner. R. S. c. 23, § 63.

Any person may take down and remove gates, bars or fences, upon or across any highway or town way, unless they are there to prevent the spread of infectious disease, or were placed there by license of the county commissioners or municipal officers of the town. To those granting such license, a person aggrieved by such removal may apply, and on proof that such erections were made by their license, they may order them to be replaced by the person who removed them. R. S. c. 23, § 87; 12 Me. 32, 38; 59 Me. 114.

Whoever willfully and maliciously cuts down, destroys, or otherwise injures any shrub or tree for ornament or use; breaks, injures or defaces any fence; throws down or opens any gates or bars; injures, destroys or severs from the land of another, any produce thereof or thing attached thereto, such articles not being his own, shall be punished by imprisonment for less than one year, and by fine not exceeding one hundred dollars. R. S. c. 128, § 12; 3 Me. 178; 5 Me. 409; 37 Me. 331; 60 Me. 410.

Towns may raise and assess money necessary for purchasing and fencing burying grounds, and maintaining private burying grounds established before eighteen hundred and eighty. R. S. c. 4, § 71; P. L. 1907 c. 59.

Each town, parish or religious society and any individuals, association or corporation to which any ancient or public burying yard belongs, shall keep a substantial fence around it in good repair; and for neglect shall forfeit not exceeding one hundred dollars, to be applied as prescribed in the preceding section by such officers of such town, or the officers or committee of such parish or society, or by such individuals, association or corporation. R. S. c. 20, § 3; P. L. 1905 c. 101.

Whoever takes down or intentionally injures any fence, erected to protect the line of any railroad, or turns any horse, cattle or other animal, upon or within the enclosure of such railroad, shall be fined not less than ten, nor more than one hundred dollars, or imprisoned not less than ten days nor more than six months. R. S. c. 52, § 28.

(NOTE: As to what constitute legal fences, maintenance of the same, duties of fence viewers, etc., see R. S. c. 26; also 91 Me. 221; 98 Me. 511; 96 Me. 484.)

CHAPTER LXXXV.

LOST GOODS AND STRAY BEASTS.

Whoever finds lost money or goods of the value of three dollars or more, shall, if the owner is unknown, within seven days give notice thereof in writing to the clerk of the town where they are found and post a notification thereof in some public place in said town. If the value is ten dollars or more, the finder in addition to the notice to the town clerk and the notification to be posted as aforesaid, shall, within one month after finding, publish a notice thereof in some newspaper published in the town, if any, otherwise in some newspaper published in the county. R. S. c. 101, § 10.

Whoever takes up a stray beast shall, within seven days give notice thereof in writing, containing a description of its color, and its natural and artificial marks, to the clerk of the town where such beast is taken, and shall cause a notice thereof, containing a like description of the beast to be posted and, if such beast is of the value of ten dollars or more, published, in the manner provided in the preceding section; otherwise he shall not be entitled to compensation for any expenses which he may incur relative thereto. R. S. c. 101, § 11.

Every finder of lost goods or stray beasts of the value of ten dollars or more, shall, within two months after finding, and before using them to their disadvantage, procure a warrant from the town clerk or a justice of the peace, directed to two persons,

appointed by said clerk or justice, not interested except as inhabitants of the town, returnable at said clerk's office, within seven days from its date, to appraise said goods under oath. R. S. c. 101, § 12.

If the owner of such lost money or goods appears within six months, and if the owner of such stray beasts appears within two months after said notice to the town clerk, and gives reasonable evidence of his ownership to the finder, he shall have restitution of them or the value of the money or goods, paying all necessary charges and reasonable compensation to the finder for keeping, to be adjudged by a justice of the peace of the county, if the owner and finder cannot agree. R. S. c. 101, § 13.

Form of Warrant to Appraise Lost Goods.

[Seal.]

_____, ss.

To A. B. and C. D., of _____,

GREETING.

Upon the application of E. F., of _____, to the, G. H., town clerk of said _____, you are hereby appointed to appraise, upon oath, at the true value thereof in money, according to your best judgment [*here describe the goods or money*]; found by the said E. F., at _____; and to make due return of your doings, with this warrant, into the town clerk's office in said _____, within seven days from the date hereof. Given under my hand and seal, this _____ day of _____, A. D. 19—.

G. H., *Town Clerk.*

_____, ss.

Then personally appeared the above named A. B. and C. D. and made oath that they would faithfully perform the service required by the above warrant.

Before me,

I. J., *Justice of the Peace.*

Form of the Appraisal to Be Made on the Warrant.

The subscribers, appointed appraisers by the within warrant, have carefully examined the property set forth therein, and do upon oath appraise the value to be _____ dollars and _____ cents.

Dated at _____ aforesaid, the _____ day of _____, A. D. 19—.

A. B., }
C. D., } *Appraisers.*

If no owner appears within six months, such money or lost goods shall belong to the finder, by paying one-half their value after deducting all necessary charges, to the treasurer of said town; but if he neglects to pay it on demand, it may be recov-

ered in an action brought by said treasurer in the name of the town. R. S. c. 101, § 14.

If the owner does not appear and prove his title to the beasts within said two months, the finder may sell them at public auction, first giving notice of such sale at least four days before the time of sale, in two public places in the town in which the beasts were taken up; and the proceeds of the sale after deducting all lawful charges, shall be deposited in the town treasury. R. S. c. 101, § 15.

If such owner appears within six months after such notice is filed with the town clerk, and proves his title to the beasts, he shall, if they have not been sold, have restitution of the same, after paying the charges arising thereon as provided in section thirteen; and if the beasts have been sold, he shall be entitled to receive the money so deposited in the treasury from the proceeds of the sale. If no owner appears within six months, the beasts or the value or price thereof, after deducting said charges, shall, as prescribed in section fourteen be equally divided between the finder and the town. R. S. c. 101, § 16.

If the finder of lost money or goods, of the value of three dollars or more, or if the person taking up such stray beast, neglects to give notice to the town clerk and to cause them to be advertised as herein provided, he forfeits to the owner the full value thereof, unless he delivers or accounts therefor to the owner, in which case he shall forfeit not more than twenty dollars, half to the town, and half to the prosecutor. R. S. c. 101, § 17.

Whoever takes away a beast held as a stray, without paying all lawful charges incurred in relation to the same, shall forfeit to the finder double the amount of said charges, not exceeding the value of the beast, and in addition thereto shall be liable for any trespass committed by him in so doing. R. S. c. 101, § 18.

Any person injured in his land by sheep, swine, horses, asses, mules, goats or neat cattle, in a common or general field, or in a close by itself, may recover his damages by taking up any of the beasts doing it, and giving the notice provided in section eleven, or in an action of trespass against the person owning or having possession of the beasts at the time of the damage, and there shall be a lien on said beasts, and they may be attached in such action and held to respond to the judgment as in other cases, whether owned by the defendant or only in his possession. But if the beasts were lawfully on the adjoining lands, and escaped therefrom in consequence of the neglect of the person suffering the damage to maintain his part of the petition fence, their owner shall not be liable therefor. R. S. c. 101, § 19.

CHAPTER LXXXVI.

AUCTIONS AND AUCTIONEERS.

The municipal officers of any town may license any legal voter thereof, by a writing under their hands, to be auctioneer for one year, in every town in their county; and shall record every such license in a book kept by them for that purpose. Upon receipt of such license, such auctioneer shall pay two dollars to the treasurer of said licensing town for said town, and may be exempted from the deduction of two and one-half per cent from the gross amount of sales provided in section three. R. S. c. 36, § 1; 4 Me. 263, 335; 25 Me. 142; 38 Me. 311; 43 Me. 160; 53 Me. 394.

Form of License.

Town of ———.

Be it known, That ——— is hereby licensed to be auctioneer for one year in the town of ———.

Dated the ——— day of ———, 19—.

A. B., } *Selectmen of the*
C. D., } *Town of* ———.
E. F., }

If such officers, after written application to them for a license, unreasonably refuse or neglect to grant it, the applicant, by giving them ten days' notice and a bond to pay all costs arising thereafter, may appeal to the county commissioners, who, after a hearing of the parties, may grant the license if they judge it reasonable. R. S. c. 36, § 2.

Every person licensed shall keep a fair and particular account of all goods and chattels by him sold, stating of whom received, and the price for which the same were sold; and unless otherwise authorized, if said goods are sold voluntarily for the benefit of parties residing out of the state, he shall deduct two and a half per cent from the gross amount of the sales for the use of the town where the sale is made, and pay the same to the treasurer thereof within ten days after the sale; and in default thereof, he shall be fined not less than fifty, nor more than three

hundred dollars, and shall forfeit his license. R. S. c. 36, § 3; 53 Me. 394.

No auctioneer shall allow any person, not a legal voter in the town from which he received his license, to act for or under him in any sales at public auction, under a penalty of fifty dollars for each offense; and any person so acting is subject to the same penalty. R. S. c. 36, § 4.

If an auctioneer receives goods for sale at public auction, of any servant or minor, knowing him to be such, or sells goods, before sunrise or after sunset, at public auction, he forfeits not less than fifty, nor more than one hundred and seventy dollars for each offense; but the municipal officers of any town may license any duly licensed auctioneer specially, to sell after sunset upon payment of a sum not exceeding twenty dollars. R. S. c. 36, § 5.

A parcel of real estate lying partly in one town and partly in another, may be sold by an auctioneer of either; but if an auctioneer sells or offers to sell real or personal property at public auction in any other towns than those authorized by his license, or if any person sells without a license, he forfeits not exceeding six hundred dollars; *provided, however*, that any person, employed by the owner of blooded animals may sell the same, as auctioneer, at public auction, whether licensed by municipal officers or not. R. S. c. 36, § 6; 43 Me. 160.

If the tenant or occupant of any building, having actual possession and control thereof, knowingly permits any person to sell any goods or chattels at public auction contrary to this chapter, in such building, or in any apartment, or yard appurtenant thereto, he forfeits not more than six hundred, nor less than one hundred dollars. R. S. c. 36, § 7.

Nothing in the preceding sections extends to sales made by sheriffs, deputy sheriffs, coroners, constables, tax collectors, executors or administrators, or any other person authorized to sell goods, chattels or lands, by order of any court or judge of probate. R. S. c. 36, § 8.

All fines imposed by this chapter may be recovered by indictment; and it is the special duty of city marshals and their deputies, sheriffs, constables and police officers, to make immediate complaint for every offense against the provisions hereof; half of all fines shall be for the prosecutor, and half for the town where the offense is committed. R. S. c. 36, § 9.

The municipal officers of any city or town, may, upon presentation of an invoice or inventory of the property to be sold, which shall be produced unless said municipal officers decide that the same is unnecessary, grant a special license to any auctioneer, a voter in the state, to sell at public auction, between the hours of seven in the forenoon and six in the afternoon, upon payment to such city or town of five dollars for each invoice or inventory. R. S. c. 36, § 10.

CHAPTER LXXXVII.

HAY.

All hay pressed and put up in bundles, except hay pressed by farmers and retailed from their own barns, shall have the first letter of the Christian name and the whole of the surname of the person putting up the same, written, printed or stamped on bands or boards made fast thereto, with the name of the state and the place where such person lives. Whoever offers for sale or shipment any pressed hay not marked as aforesaid, except hay pressed by farmers and retailed from their own barns, forfeits one dollar for each bale so offered, to be recovered by complaint. No person who has received hay not marked as provided in this section shall defend any action for the price thereof upon that ground, unless he shall prove that, before the delivery of said hay to him, he requested the person from whom he bought the same to comply with the provisions of this section. R. S. c. 39, § 37; 32 Me. 448; 46 Me. 200; 54 Me. 147; 64 Me. 389, 397; 71 Me. 82.

Whoever labors in cutting or harvesting hay has a lien on all the hay cut or harvested by him and his co-laborers for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens reserved to the state, continues for thirty days after the last of such services are performed and may be enforced by attachment. R. S. c. 93, § 54.

Whoever presses hay or straw has a lien on all the hay or straw so pressed for the amount due for such pressing, which takes precedence of all other claims except liens reserved to the

state and the lien specified in the preceding section, continues for thirty days after said pressing is completed and may be enforced by attachment. R. S. c. 93, § 55.

One pair of working cattle, or instead thereof one pair of mules or one or two horses not exceeding in value three hundred dollars, and a sufficient quantity of hay to keep them through the winter season is exempt from attachment and execution. R. S. c. 83, § 64, par. 7.

Hay, grain and potatoes, orchard products and wool, owned by and in possession of the producer, is exempt from taxation. R. S. c. 9, § 6, par. 6; 63 Me. 16.

Any city may purchase and keep for use scales for weighing hay and other articles, appoint weighers and fix their fees, to be paid by purchaser. R. S. c. 44, § 5; 37 Me. 88; 60 Me. 470. See also "Weights and Measures".

CHAPTER LXXXVIII.

LIBRARIES, AND CHARITABLE AND BENEVOLENT SOCIETIES.

When seven or more persons desire to be incorporated as proprietors of a social, military, literary, scientific or county law library; as a masonic lodge or chapter of any order or degree; as a masonic association consisting of members of different orders or degrees; as a lodge of the Independent Order of Odd Fellows; as a division of the Sons of Temperance; as a tent of the Rechabites; as a grange of Patrons of Husbandry; as a council of the Sovereigns of Industry; as a Grand Army post; as a relief or benefit association for mutual assistance; as a monument or memorial association; as a society to promote temperance; as a village improvement society; as an association for the promotion of good municipal government; as a yacht club, or for any literary, scientific, musical, charitable, educational, social, military, agricultural, moral, religious or benevolent purpose; they may apply in writing to any justice of the peace in the county, who may issue his warrant, directed to one of said

applicants, requiring him to call a meeting thereof at such time and place as the justice may appoint. R. S. c. 57, § 1.

Such applicant may call it, by reading the warrant in the presence and hearing of each, or by leaving an attested copy thereof at his last and usual place of abode, at least fourteen days before the day of meeting, or by publishing an attested copy thereof in some newspaper printed in said county, for two weeks successively, the first publication to be at least fourteen days before the day of meeting. R. S. c. 57, § 2; 94 Me. 400.

When assembled pursuant to the warrant, they may organize themselves into a corporation, adopt a corporate name, and they, their associates and successors may have continual succession; have a common seal; elect all necessary officers; adopt by-laws, not inconsistent with law, and enforce the same by suitable penalties; have the same rights and be under the same liabilities, as other corporations, in prosecuting and defending suits at law; and enjoy all other rights, privileges and immunities, of a legal corporation. R. S. c. 57, § 3; 94 Me. 400.

The president, treasurer and majority of the directors or trustees of every corporation organized under the foregoing sections shall, within sixty days after organization, prepare a certificate setting forth the name and purposes of the corporation, the town where located, the number and names of the officers, and shall sign and make oath to it, and shall file the same in the office of the secretary of state, and the secretary of state shall keep a list of the same in a book prepared for that purpose, showing the name, location and date of organization of each such corporation. R. S. c. 57, § 4.

Such corporation may take and hold by purchase, gift, devise or bequest, personal or real estate, in all not exceeding in value one hundred thousand dollars, owned at any one time, and may use and dispose thereof only for the purposes for which the corporation was organized. R. S. c. 57, § 5.

The limitation of one hundred thousand dollars is not absolutely prohibitive. Is chiefly directory and regulative. Bequest in excess of limited sum is voidable only. May be avoided by the state alone. Must be treated as valid until in proper proceedings by the state, the bequest is declared invalid. 90 Me. 405.

No corporation, organized for charitable or benevolent purposes, shall sue any of its members for dues or contributions of any kind, or be sued by any member for any benefit or sum due

him, but all such rights and benefits, dues and liabilities, shall be regulated and enforced only in accordance with its by-laws. R. S. c. 57, § 6; 95 Me. 497.

In every county, where five or more attorneys reside, any five of them may procure themselves and the other attorneys resident in the county to be incorporated as aforesaid for the purpose of establishing a law library; and the notification required, if posted in some conspicuous part of the courthouse seven days previous to their meeting, is sufficient; they may take the name of "The trustees of the law library in the county of——;" and at such meeting, which shall be held at a term of the court therein, they may choose a clerk, librarian and treasurer, to be sworn, and hold their offices during the pleasure of the corporation; they may make all necessary and lawful regulations; and at their meetings, the oldest member present shall preside. R. S. c. 57, § 7.

The treasurer of each library association, under the direction of the trustees, shall apply all moneys received of the county treasurer, and all bequests and gifts, to form a law library under the appointed regulations; and the clerk shall keep an exact record of all their proceedings. R. S. c. 57, § 8.

The treasurer shall keep an exact account of all moneys, gifts and bequests, belonging to the corporation, and annually settle the same on oath, in the manner prescribed; and the treasurer, librarian and clerk, shall be answerable for all misfeasance in an action by the corporation. The treasurer shall, annually, before the second Wednesday in January, deposit in the office of the treasurer of state a statement of the funds received by the corporation during the year preceding. R. S. c. 57, § 9.

Any town may establish a free public library therein, for the use of its inhabitants, and provide suitable rooms therefor, under such regulation for its government as the inhabitants from time to time prescribe; and may appropriate for the foundation and commencement of such library a sum not exceeding two dollars, and for its maintenance and increase annually a sum not exceeding two dollars, for each of its ratable polls in the year next preceding. Any town in which there is a free public library may establish and maintain under the same general management and control, such branches of the same as the convenience and wants of its citizens seem to demand. R. S. c. 57, § 10.

Any village corporation located in a town where no free library exists, may establish a library within its limits for the

free use of all of its inhabitants; and may levy and assess a corporate tax and appropriate therefrom for the foundation and commencement of such library, a sum not exceeding two dollars, and for its maintenance and increase annually a sum not exceeding one dollar for each ratable poll within the limits of such village corporation in the year next preceding. Village libraries established under this section shall be subject to all the duties and entitled to all the privileges prescribed by the laws relating to free public libraries in towns. R. S. c. 57, § 11.

Any town may raise and appropriate annually a sum of money, not exceeding the legal limit established for maintaining free libraries, for the purpose of securing to its inhabitants the free use of a library located in an adjoining town, and shall be entitled to receive from the treasurer of state a sum equal to ten per cent of the amount so raised, appropriated and expended yearly, to be paid on the certificate of its municipal officers returned as provided in section fourteen. R. S. c. 57, § 12.

Two or more adjacent towns may unite in establishing and maintaining a free public library with branches thereof in each town, for the free use of all the inhabitants of said towns, and may each raise and appropriate for that purpose annually a sum not exceeding the legal limit established for maintaining free libraries, and such towns shall be subject to all duties and entitled to all the benefits prescribed by the laws relating to free libraries. R. S. c. 57, § 13.

The municipal officers in any town or city, and the assessors of any village corporation where a free public library is established, shall annually, on the first day of May, certify to the governor and council the amount of money appropriated and expended by said town, city or village corporation during the preceding year, for the purchase of books and documents for the use and benefit of such free public library, and for the payment of the running expenses thereof; and the governor, with the advice and consent of the council, shall draw a warrant on the treasurer of state for the purchase of books for the use of such library, for a sum equal to ten per cent of the amount expended by said town or village corporation as certified by its municipal officers or assessors. R. S. c. 57, § 14.

Any town or city, in which there is a library owned or controlled by a corporation or association, or by trustees, may appropriate a sum not exceeding one dollar for each of its ratable polls in the year next preceding to procure for such

library the free use of its books for all the inhabitants of the town or city, under such restrictions and regulations as shall insure the safety and good usage of the books, and such a library shall then be considered a free public library within the meaning of this chapter, and said town or city shall be entitled to the benefits of the preceding section, provided that any books and documents purchased with said stipend, and all books and documents donated by the state, shall be and remain the property of said municipality. R. S. c. 57, § 15.

In every town and city where a free public library exists, the librarian of the state library shall transmit to such library all laws, Maine reports, and other documents which the town or city is by law entitled to receive from the state, and the same shall be constantly kept in such library for the use and benefit of all the citizens; and the municipal officers of said town or city, shall transfer to said library all the laws, Maine reports and other documents, heretofore received from the state, and now in custody of any of the officers of said town or city; and the officers of said library, on or before the first day of April of each year, shall send to the librarian of the state library a report containing a list of all books and documents purchased with the state stipend for the preceding year, and of all books and documents received from the state in said library. The aid from the state, hereby provided, shall be withheld from any town, city or village corporation until the report herein required to be made on or before the first day of April of each year, shall have been received by the librarian of the state library. And the same shall also be withheld unless said report shall show that the laws, Maine reports and other documents furnished to said town or city by the state are kept in said library as required by this section. R. S. c. 57, § 16.

The librarian shall donate from the state library to any town having no free public library owned or controlled by the town, books purchased for that purpose, not exceeding fifty per cent in value of the books and documents purchased by said town for the purpose of founding a free public library therein; said donation in no case to exceed one hundred dollars. No town shall be entitled to the benefits of this provision, until its legal voters, at a regularly called town meeting, have raised and appropriated not less than one hundred dollars for the purchase of books, and have provided for the care, custody and distribution of its own books, and of those to be donated by the state. R. S. c. 57, § 17.

The librarian or trustees of any free public library may ask the governor and council for advice in regard to the selection of books, and may receive instruction at the state library in cataloguing, and any other matters pertaining to the maintenance or administration of the library. R. S. c. 57, § 18.

Any town, as such, may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of a public library therein; and may accept by vote of the legal voters thereof, any land or land and buildings thereon, to be used as a public library or art gallery, or both combined. Any town, as such, may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of public parks and playgrounds in such town; and may accept by vote of the legal voters thereof, any land in such town to be used as a public park or playground, or both combined. When any plantation is incorporated into a town, such gifts and the proceeds thereof fully vest in such town. R. S. c. 57, § 19.

CHAPTER LXXXIX.

ITINERANT VENDORS.

Every itinerant vendor who shall sell or expose for sale, at public or private sale, any goods, wares and merchandise without state and local licenses therefor, issued as hereinafter provided, shall be punished for each offense by fine not exceeding fifty dollars or by imprisonment not exceeding sixty days, or by both such fine and imprisonment. R. S. c. 45, § 1.

All persons, both principals and agents, who shall by circular, handbill, newspaper or in any other manner, advertise any such sales as those referred to in the preceding section, before proper licenses shall be issued to the vendor, shall be punished by fine not exceeding fifty dollars or imprisonment not exceeding sixty days, or by both such fine and imprisonment. R. S. c. 45, § 2.

Every itinerant vendor, whether principal or agent, before commencing business, shall take out a state license and local licenses in the manner hereinafter set forth, but nothing herein contained shall affect the right of any municipal officers to make such reg-

ulations relative to itinerant vendors as may be permissible under the general law or under any municipal charter. R. S. c. 45, § 3.

Every itinerant vendor desiring to do business in this state shall deposit with the secretary of state the sum of five hundred dollars as a special deposit, and after such deposit, upon application in proper form and the payment of a further sum of twenty-five dollars as a state license fee, the secretary of state shall issue to him an itinerant vendor's license, authorizing him to do business in the state in conformity with the provisions of this chapter for the term of one year from the date thereof. Every license shall set forth a copy of the application upon which it is granted. Such license shall not be transferable nor give authority to more than one person to sell goods as an itinerant vendor, either by agent or clerk or in any other way than in his own proper person, but any licensee may have the assistance of one or more persons in conducting his business, who may aid that principal but shall not act for or without him. No person shall be entitled to hold, or directly or indirectly receive the benefit of more than one state license at any one time, and any license obtained, held or used in violation of law is void. R. S. c. 45, § 4.

All applications for state licenses shall be sworn to, shall disclose the names and residences of the owners or parties in whose interests said business is conducted, and shall be kept on file by the secretary of state, and a record shall be kept by him of all licenses issued upon such applications. All files and records both of the secretary of state and of the several towns relative to such licenses, shall be in convenient form, and open for public inspection. R. S. c. 45, § 5.

Every itinerant vendor intending to sell goods in any town shall file his state license and an application for a local license with the collector of taxes for such town, and before selling, offering or exposing for sale any goods in such town shall pay to the collector for the use of such town, as a further local license fee for such sale in such town, a sum to be computed as provided in the following section. A receipt for said local license fee when paid shall be indorsed by said collector on the back of such state license, which shall remain on file with such collector so long as such sale shall continue or such goods be kept, exposed or offered for sale in such town. Every application for a local license shall be signed by the holder of the accompanying state license and shall specify the kind and line of goods then in stock in such town, the name of the town from which said goods were

last shipped, and the name of the town in which said goods were last exposed or offered for sale. Such local license fee shall be computed and collected in each town respectively in which said goods shall be successively offered or exposed for sale. R. S. c. 45, § 6.

The collector of taxes for any town upon receiving an application in due form as provided in the preceding section, accompanied by such applicant's state license shall forthwith give notice thereof to the assessors of said town. Said assessors, or a majority of them, shall as soon as practicable examine the stock of goods described in such application, and shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding taxation in said town. The payment of said local license fee to said collector shall authorize such applicant who has complied with all other requirements of law to sell within the limits of said town, such goods, wares and merchandise as are described in his application, and for that purpose to carry in stock in said town, goods only of the kind or line specified in his application, and not to exceed in amount at any one time the valuation on which his local license fee for such town was computed, and to continue in force so long as such licensee shall in good faith continuously keep, offer and expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the first day of April next following the date of application. Any itinerant vendor, who after applying or paying for a local license shall increase his stock kept, offered or exposed for sale in the town for which such local license fee was paid above the valuation on which such local license fee was computed, without first making seasonable written application to the collector of such town for a supplemental license for such excess of stock shall be fined not less than twenty, nor more than fifty dollars, and for each day such excess of stock is kept, offered or exposed for sale without payment of local license fee therefor shall be fined not less than twenty, nor more than fifty dollars, and forfeits his state license. Supplemental licenses shall be applied for, and the fees therefor shall be computed, certified and collected in the manner provided for local license fees. R. S. c. 45, § 7; 90 Me. 253.

Whoever as proprietor or clerk, having in his care, custody or keeping, any goods for the sale of which a local license is required,

neglects or refuses to file the application for local license required by law, or whoever makes a false or fraudulent representation or statement in any application for a local license, shall be fined not less than twenty, nor more than fifty dollars for each day such goods are kept, offered or exposed for sale. The penalties provided herein are not to be construed as substitutes for payment of local license fees. R. S. c. 45, § 8.

Every town in which is kept, exposed or offered for sale an itinerant vendor's stock of goods has a lien on such goods for the amount due such town for local license fee on such stock to be enforced by suit and attachment within ten days from the time such goods were first publicly offered or exposed for sale in such town. When any person liable therefor neglects or refuses to pay the local license fee provided in section seven the tax collector of the town to which such license fee is due may maintain an action of debt by writ of attachment or trustee process therefor in the name of such town or in his own name, but for the benefit of such town. Tax collectors, police officers and constables shall prosecute for violations of the provisions hereof relating to itinerant vendors, in their respective towns, and shall report such violations promptly to the assessors for the purpose of computing and certifying such local license. R. S. c. 45, § 9.

No itinerant vendor shall advertise, represent or hold forth any sale as an insurance, bankrupt, insolvent, assignee's, trustee's, testator's, executor's, administrator's, receiver's, wholesale or manufacturers', or closing out sale or as a sale of any goods damaged by smoke, fire, water or otherwise, or in any similar form, unless he shall before so doing, state under oath to the secretary of state, either in the original application for a state license or in a supplementary application subsequently filed, and copy on the license all the facts relating to the reasons and character of such special sale so advertised or represented, including a statement of the names of the persons from whom the goods, wares and merchandise were obtained, the date of delivery to the person applying for the license, and the place from which said goods, wares and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares and merchandise to be so sold. R. S. c. 45, § 10.

Any false statement in an application, either original or supplementary, for a license, and any failure on the part of any licensee to comply with all the requirements of the last preceding section shall subject said itinerant vendor to the same penalty as if he had no license. R. S. c. 45, § 11.

All state licenses issued under section four shall expire by limitation one year from the date thereof, and may be, if so desired, surrendered at any time prior thereto for cancellation. R. S. c. 45, § 12.

Upon the expiration and return or surrender of each state license, the secretary of state shall cancel the same, indorse the date of delivery and cancellation thereon, and place the same on file. He shall then hold the special deposit of each licensee hereinbefore mentioned for the period of sixty days, and after satisfying any and all claims made upon the same under section fourteen, shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee depositing it. R. S. c. 45, § 13.

Each deposit made with the secretary of state shall be subject, so long as it remains in his hands, to attachment and execution in behalf of creditors whose claims arise in connection with business done in the state, and the secretary of state may be held to answer as trustee, under the trustee process, in any civil action in debt or case brought against any licensee, and the secretary of state shall pay over, under order of court, or upon execution, such sum of money as he may be chargeable with upon his answer or otherwise. Said deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violation of this chapter, and the clerk or recorder of the court in which, or the trial justice by whom, such fine or penalty is imposed shall thereupon notify the secretary of state of the name of the licensee, against whom such fine or penalty is adjudged and of the amount of such fine or penalty, and the secretary of state if he has in his hands a sufficient sum deposited by such licensee shall pay the sum so specified to said clerk, recorder or trial justice, and if the secretary of state shall not have a sufficient sum so deposited he shall make payment as aforesaid, of so much as he has in his hands. All claims upon deposit shall be satisfied after judgment, fine or penalty in the order in which notice of the claim is received by the secretary of state, until all such claims are satisfied or the deposit exhausted, but no notice filed after the expiration of the sixty days' limit aforesaid shall be valid. No deposits shall be paid over by the secretary of state to the licensees so long as there are any outstanding claims or notices of claims against them, respectively, unless he is satisfied that such claims will not be prosecuted to final judgment or that no fine or penalty will be imposed. R. S. c. 45, § 14.

The words "itinerant vendors" for the purposes of this chapter shall be construed to mean and include all persons, both principals and agents, who engage in a temporary or transient business in this state, either in one locality or in traveling from place to place selling goods, wares and merchandise, and who, for the purposes of carrying on such business, hire, lease or occupy any building or structure for the exhibition and sale of such goods, wares and merchandise, or who sell goods, wares and merchandise, at retail from a car, steamer or vessel. No itinerant vendor shall be relieved or exempted from the provisions and requirements hereof by reason of associating himself temporarily with any local dealer, trader or merchant, or by conducting such temporary or transient business in connection with or as a part of the business of, or in the name of any local dealer, trader or merchant. R. S. c. 45, § 15.

The provisions of this chapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to *bona fide* sales of goods, wares and merchandise by sample for future delivery, nor to hawkers on the streets or pedlers from vehicles. R. S. c. 45, § 16.

Municipal and police courts and trial justices shall have jurisdiction of all complaints and prosecutions under this chapter. R. S. c. 45, § 17.

CHAPTER XC.

PROPERTY EXEMPTED FROM ATTACHMENT AND EXECUTION.

The following personal property is exempt from attachment and execution:

First. The debtor's apparel; household furniture necessary for himself, wife and children, not exceeding one hundred dollars in value, and one bed, bedstead, and necessary bedding for every two such persons.

Second. All family portraits, Bibles, and schoolbooks in actual use in the family; one copy of the statutes of the state, and a library, not exceeding one hundred and fifty dollars in value.

Third. All his interest in one pew in a meeting-house where he and his family stately worship.

Fourth. One cooking stove; all iron stoves used exclusively for warming buildings; charcoal, and not exceeding twelve cords of wood conveyed to his house for the use of himself and family; all anthracite coal, not exceeding five tons; all bituminous coal, not exceeding fifty bushels; and ten dollars' worth of lumber, wood or bark.

Fifth. All produce of farms until harvested; one barrel of flour; corn and grain necessary for himself and family, not exceeding thirty bushels; all potatoes and other provisions raised or bought, and necessary for himself and family; and all flax raised on a half acre of land, and all articles manufactured therefrom for the use of himself and family.

Sixth. The tools necessary for his trade or occupation, materials and stock designed and procured by him and necessary for carrying on his trade or business and intended to be used or wrought therein, not exceeding fifty dollars in value, and one sewing machine not exceeding one hundred dollars in value for actual use by himself or family.

Seventh. One pair of working cattle, or instead thereof one pair of mules or one or two horses not exceeding in value three hundred dollars, and a sufficient quantity of hay to keep them through the winter season. If he has more than one pair of working cattle or mules, or if the two horses exceed in value three hundred dollars, he may elect which pair of cattle or mules or which horse shall be exempt. If he has a pair of mules or one or two horses so exempt, he may also have exempt for each of said horses or mules, one harness not exceeding twenty dollars in value; and one horse sled not exceeding the same value; but if he has at the same time an ox sled, he may elect which sled shall be exempt.

Eighth. Domestic fowl, not exceeding fifty dollars in value, two swine, one cow, and one heifer under three years old, or if he has no oxen, horse or mule, two cows, and he may elect the cow or cows and heifer, if he has more than are exempt, ten sheep and the wool from them, and the lambs raised from them until they are one year old, and a sufficient quantity of hay to keep said cattle, sheep and lambs through the winter season.

Ninth. One plough, one cart or truck wagon, or one express wagon, one harrow, one yoke with bows, ring and staple, two chains, one ox sled and one mowing machine.

Tenth. One boat not exceeding two tons burden, usually employed in fishing business, belonging wholly to an inhabitant of the state.

Eleventh. The personal property of any co-partnership, or the interest of any co-partner therein shall be exempt from attachment on mesne process or seizure on execution for any individual debt or liability of such co-partner, but such co-partner's interest in the partnership property may be reached and applied in payment of any judgment against him in the manner provided in section nine of chapter seventy-nine. R. S. c. 83, § 64.

The shares of stock in a cemetery corporation are exempt from attachment (R. S. c. 20, § 19); also two shares of stock in a loan and building association (R. S. c. 48, § 57); life and accident policies and money due thereon (R. S. c. 49, §§ 106 and 130); money due from policies in fraternal beneficiary associations (R. S. c. 49, § 148); receipts of agricultural societies (R. S. c. 60, § 26).

A lot of land and dwelling-house and outbuildings thereon, the property of a householder in actual possession thereof and not the owner of an exempted lot purchased from the state, is exempt from attachment and levy on execution as provided in the following sections. R. S. c. 83, § 65.

Such person may file in the registry of deeds in the county or district where the land lies, a certificate signed by him, declaring his wish for such exemption, and describing the land and buildings; and the register shall record it in a suitable book; and so much of such property as does not exceed five hundred dollars in value, is exempt from attachment or levy on execution issued on a judgment recovered for any debt, contracted jointly or severally by such person after the date of the recording thereof; and the record in the register's office is prima facie evidence that the certificate purporting to be there recorded, was made, signed and filed as there appears. R. S. c. 83, § 66.

When such property is claimed by a creditor to be of greater value than five hundred dollars, it may be seized on execution, and the appraisers shall first set off such part thereof as the debtor may select, and if he neglects so to do, the officer may select for him, to such value, by metes and bounds; and they shall then appraise and set off to the creditor, so much of the remainder as may be necessary to satisfy the execution; the appraisers shall be sworn accordingly and the officer shall make return of his doings thereon. R. S. c. 83, § 67.

After his death, the exempted premises shall not be sold for payment of his debts during the widowhood of his widow, or the minority of any of his children; but may be occupied by his widow during her widowhood and by his children during minority, free from claim by any creditor of his estate. But this and the three preceding sections do not exempt such property from the lien of mechanics or material men. R. S. c. 83, § 68.

Debtor must elect what he claims as exempt. 58 Me. 416.

Pension money not exempt after it comes to pensioner's hands. 77 Me. 25, 59.

Property owned jointly not exempt. 82 Me. 164.

Pair of working cattle belonging to partnership not exempt. Ib.

CHAPTER XCI.

RIGHTS OF MARRIED WOMEN.

A married woman, of any age, may own in her own right real and personal estate acquired by descent, gift or purchase; and may manage, sell, convey, and devise the same by will, without the joinder or assent of her husband; but such conveyance without the joinder or assent of the husband, shall not bar his right and interest by descent in the estate so conveyed. Real estate directly conveyed to her by her husband, cannot be conveyed by her without the joinder of her husband, except real estate conveyed to her as security or in payment of a bona fide debt actually due to her from her husband. When payment was made for property conveyed to her from the property of her husband, or it was conveyed by him to her without a valuable consideration, it may be taken as the property of her husband to pay his debts contracted before such purchase. R. S. c. 63, § 1; 27 Me. 130; 31 Me. 564; 32 Me. 33; 34 Me. 151, 542, 572; 35 Me. 428; 36 Me. 70, 85; 37 Me. 396, 399; 41 Me. 573; 42 Me. 116; 43 Me. 189; 45 Me. 445, 480; 47 Me. 134, 335; 48 Me. 180, 346; 49 Me. 482; 50 Me. 93, 374; 51 Me. 50, 252, 348, 357, 519; 53 Me. 47; 55 Me. 189, 247; 57 Me. 301, 562; 58 Me. 141; 60 Me. 229; 62 Me. 271; 63 Me. 319, 321; 64 Me.

181; 65 Me. 444-5; 67 Me. 195; 69 Me. 252; 71 Me. 157; 75 Me. 474, 260; 76 Me. 494; 77 Me. 524; 78 Me. 18; 80 Me. 279, 478; 81 Me. 23, 376; 82 Me. 264; 84 Me. 362, 541; 88 Me. 22; 91 Me. 553; 96 Me. 530; 97 Me. 494; 100 Me. 508.

A woman, having property, is not deprived of any part of the same by her marriage, since April twenty-one, eighteen hundred and forty-four; and a husband, by marriage since that time, acquires no right to any property of his wife. His rights acquired before that time are not affected by this chapter. A married woman may release to her husband the right to control her property, or any part of it, and to dispose of the income thereof for their mutual benefit, and may in writing revoke the same. R. S. c. 63, § 2; 48 Me. 268; 63 Me. 521; 64 Me. 181; 68 Me. 104, 277; 69 Me. 252; 71 Me. 134; 72 Me. 116; 81 Me. 376; 91 Me. 553.

She may receive the wages of her personal labor, not performed for her own family, maintain an action therefor in her own name, and hold them in her own right against her husband or any other person. R. S. c. 63, § 3; 58 Me. 55; 64 Me. 181; 66 Me. 184; 76 Me. 524; 80 Me. 348; 88 Me. 22; 91 Me. 553.

A husband married since April twenty-six, eighteen hundred and fifty-two, is not liable for the debts of his wife contracted before marriage, nor for those contracted afterward in her own name, for any lawful purpose; nor is he liable for her torts committed after April twenty-six, eighteen hundred and eighty-three, in which he takes no part; but she is liable in all such cases; a suit may be maintained against her therefor, and her property may be attached and taken on execution for such debts and for damages for such torts, as if she were sole; but she cannot be arrested. R. S. c. 63, § 4; 41 Me. 245; 42 Me. 116; 55 Me. 516; 57 Me. 547; 63 Me. 409; 64 Me. 181; 65 Me. 222; 69 Me. 110, 252; 76 Me. 426; 80 Me. 537; 82 Me. 260; 91 Me. 546; 95 Me. 107; 96 Me. 533.

She may prosecute and defend suits at law or in equity, either of tort or contract, in her own name, without the joinder of her husband, for the preservation and protection of her property and personal rights, or for the redress of her injuries, as if unmarried, or may prosecute such suits jointly with her husband, and the husband shall not settle or discharge any such action or cause of action without the written consent of the wife. Neither of them can be arrested on such writ or execution, nor can he alone maintain an action respecting his wife's property. R. S. c. 63,

§ 5; 33 Me. 197; 35 Me. 339; 46 Me. 298; 51 Me. 79; 54 Me. 159; 55 Me. 247, 359; 58 Me. 55; 67 Me. 309; 68 Me. 104, 277; 70 Me. 382; 76 Me. 423; 80 Me. 537; 84 Me. 82; 88 Me. 22; 91 Me. 553.

When a married woman dies intestate, her property, real and personal, descends as provided in chapter seventy-seven; and administration and distribution may take place accordingly; but a husband and wife, by a marriage settlement executed in presence of two witnesses before marriage, may determine what rights each shall have in the other's estate during the marriage, and after its dissolution by death, and may bar each other of all rights in their respective estates not so secured to them. R. S. c. 63, § 6; see also R. S. c. 77, §§ 9-12; 45 Me. 262; 69 Me. 251; 82 Me. 237; 95 Me. 77; 96 Me. 533.

Any person who shall without lawful excuse desert his wife when such wife is in destitute or necessitous circumstances or any person who being able by means of his property or labor to provide for the necessary support and maintenance of his wife, shall willfully neglect or refuse to provide such support and maintenance when such wife is in destitute or necessitous circumstances, or any person who shall without lawful excuse desert his or her minor child or children under the age of sixteen, or who being able by means of his or her property or labor to provide for the necessary support and maintenance of his or her minor child or children under said age shall willfully neglect or refuse to provide such support and maintenance when such child or children are in destitute or necessitous circumstances, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not more than five hundred dollars or by imprisonment with or without hard labor for not more than two years or by both such fine and imprisonment; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children; *provided* that before the trial, with the consent of the defendant or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly for the space of one year to the wife, or to the guardian or custodian of the minor child or children, or to an

organization or individual approved by the court, as trustee, and to release the defendant from custody on probation for the space of one year upon his or her entering into a recognizance, with sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise in full force and effect. If the court shall be satisfied by information and due proof, under oath, that at any time during the year the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original indictment, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture or a recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children. P. L. 1909 c. 178, § 1.

All fines or penalties provided for by the terms of this act may be recovered or enforced by indictment. The supreme judicial and superior courts shall have original and concurrent jurisdiction, in all cases under the provisions hereof. *Provided* that judges of municipal and police courts and trial justices, may cause persons brought before them on complaint under the provisions of this act to recognize with sufficient sureties to appear before the supreme judicial courts, and in default thereof shall commit them. P. L. 1909 c. 178, § 2.

CHAPTER XCII.

INTEREST.

In the absence of an agreement in writing, the legal rate of interest is six per cent a year. R. S. c. 46, § 1; 66 Me. 219, 283; 68 Me. 526; 73 Me. 471; 102 Me. 506.

All loans contracted after March eleven, eighteen hundred and ninety-nine, for less than two hundred dollars, secured by mortgage, conveyance, or pledge of personal property, shall be dis-

chargeable by the debtor upon payment or tender of the principal sum actually borrowed, and interest at the rate specified therein, which shall not exceed three per cent a month for a period not exceeding three months, and thereafter not exceeding the rate of fifteen per cent a year; no renewal thereof to bear a greater rate than fifteen per cent a year. A sum not exceeding three dollars for the actual expense of making the loan and in securing the same may be charged and collected. And all loans made in violation of this act shall bear interest at the rate of six per cent only, and all payments made in excess of six per cent interest on loans so made in violation hereof shall be applied to the discharge of the principal; and, in case a greater sum has been paid by the borrower than the amount of the principal and interest at six per cent on loans so made in violation hereof, may be recovered from the person loaning the money, whether principal or agent, by the borrower, in an action on the case. R. S. c. 46, § 2.

When a loan for less than two hundred dollars is secured by mortgage or pledge of personal property the creditor shall discharge such mortgage and restore such pledge upon payment or tender to him of the amount due him under the preceding section, and such payment or tender may be made by the debtor or by any person having an interest in the property pledged or mortgaged. R. S. c. 46, § 3.

No mortgage of household furniture made to secure a loan under the provisions of section two shall be valid unless it states with substantial accuracy the amount of the loan, the time for which the loan is made, the rate of interest to be paid and the actual expense of making and securing the loan. R. S. c. 46, § 4.

Whoever refuses or neglects after a request, to discharge a mortgage or to restore the property held as a pledge as provided in section three, shall be liable in an action of tort by the debtor or by any person having an interest in the property pledged or mortgaged for all damages resulting to him for any violation of said section three. R. S. c. 46, § 5.

The four preceding sections shall not be construed to apply to licensed pawnbrokers nor to affect section one of this chapter. R. S. c. 46, § 6.

CHAPTER XCIII.

MORTGAGES OF PERSONAL PROPERTY. LIENS AND THEIR ENFORCEMENT.

No mortgage of personal property is valid against any other person than the parties thereto, unless possession of such property is delivered to, and retained by the mortgagee, or the mortgage is recorded by the clerk of the city, town or plantation organized for any purpose, in which the mortgagor resides, when the mortgage is given. When all the mortgagors reside without the state, the mortgage shall be recorded in said city, town or plantation, where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the cities, towns or plantations in which such mortgagors reside, when the mortgage is given. A mortgage made by a corporation, shall be recorded in the town where it has its established place of business. If any mortgagor resides in an unorganized place, the mortgage shall be recorded in the oldest adjoining town or plantation, organized as aforesaid, in the county. R. S. c. 93, § 1; 19 Me. 169; 21 Me. 92; 22 Me. 561; 24 Me. 108, 558; 25 Me. 421; 27 Me. 404; 30 Me. 184; 31 Me. 74; 32 Me. 30, 237; 33 Me. 319; 34 Me. 209; 37 Me. 186, 545; 40 Me. 413, 562; 42 Me. 131, 174; 44 Me. 18; 45 Me. 605; 46 Me. 296, 415; 47 Me. 13, 505; 48 Me. 30, 369, 550, 586; 49 Me. 98, 567; 50 Me. 129, 396; 51 Me. 601; 53 Me. 321; 55 Me. 81; 56 Me. 464; 59 Me. 320; 65 Me. 490; 72 Me. 400; 73 Me. 198; 83 Me. 528; 87 Me. 171; 92 Me. 69; 97 Me. 363; 100 Me. 286, 512.

The clerk shall record all such mortgages delivered to him, in a book kept for that purpose, noting therein, and on the mortgage, the time when it was received; and it shall be considered as recorded when received. No consent given by the mortgagee of personal property to the mortgagor, on and after January one, nineteen hundred and five, for the sale or exchange of the mortgaged personal property shall be valid or be used in evidence in civil process unless in writing and signed by the mortgagee or

his assigns. R. S. c. 93, § 2; 19 Me. 173; 31 Me. 74; 37 Me. 186; 40 Me. 285; 43 Me. 376; 73 Me. 250; 81 Me. 299; 97 Me. 227.

When the condition of a mortgage of personal property is broken, the mortgagor, or person lawfully claiming under him, may redeem it at any time before it is sold, by virtue of a contract between the parties, or on execution against the mortgagor, or before the right of redemption is foreclosed, as hereinafter provided, by paying or tendering to the mortgagee, or the person holding the mortgage by assignment thereof, recorded where the mortgage is recorded, the sum due thereon, or by performing, or offering to perform the conditions thereof, when not for the payment of money, with all reasonable charges incurred; and the property, if not immediately restored, may be replevied, or damages for withholding it recovered in an action on the case. R. S. c. 93, § 3; 49 Me. 39; 54 Me. 561; 64 Me. 107; 73 Me. 199; 77 Me. 355; 95 Me. 227.

The mortgagee or his assignee, after condition broken, may give to the mortgagor or his assignee, when his assignment is recorded where the mortgage is recorded, written notice of his intention to foreclose the same, by leaving a copy thereof with the mortgagor or such assignee, or if the mortgagor cannot be found by reasonable diligence or is out of the state, although resident therein, by leaving such copy at his last and usual place of abode, or by publishing it once a week, for three successive weeks in one of the principal newspapers published in the town where the mortgage is recorded. When the mortgagor or his assignee of record is not a resident of the state and no newspaper is published in such town, such notice may be published in any newspaper printed in the county where the mortgage is recorded. R. S. c. 93, § 4; 59 Me. 420; 73 Me. 199.

The notice with an affidavit of service, or a copy of the last publication, with the name and date of the paper containing it, shall be recorded where the mortgage is recorded, and the copy of such record is evidence that the notice has been given. If the mortgagee or his assignee is not a resident of the state, he shall at the time of recording such notice, record therewith his appointment of an agent resident in the same town, to receive satisfaction of the mortgage; and payment or tender thereof may be made to him. If he does not appoint such agent, the right to redeem is not forfeited. R. S. c. 93, § 5.

The right to redeem shall be forfeited, except as provided in

the preceding sections, if the money to be paid or other thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is recorded; but nothing in the preceding sections defeats a contract of bottomry, respondentia, transfer, assignment or hypothecation of a vessel or goods, at sea or abroad, if possession is taken as soon as may be after their arrival in the state. R. S. c. 93, § 6; 24 Me. 136; 29 Me. 432; 31 Me. 106; 32 Me. 174; 36 Me. 49; 39 Me. 450; 55 Me. 81; 59 Me. 420.

All domestic vessels shall be subject to a lien to any part owner or other person to secure the payment of debts contracted and advances made for labor and materials necessary for their repair, provisions, stores and other supplies necessary for their employment, and for the use of a wharf, dry dock or marine railway, *provided*, that such lien shall in no event continue for a longer period than two years from the time when the debt was contracted or advances made. R. S. c. 93, § 7; 80 Me. 530; 21 Wall. 558.

Whoever furnishes labor or materials for building a vessel, has a lien on it therefor, which may be enforced by attachment thereof, within four days after it is launched; but if the labor and materials have been so furnished by virtue of a contract not fully completed at the time of the launching of the vessel, the lien may be enforced within four days after such contract has been completed. He also has a lien on the materials furnished, before they become part of the vessel, which may be enforced by attachment; and the owners of any dry dock or marine railway, used for any vessel, have a lien on said vessel for the use of said dock or railway, to be enforced by attachment within four days after the last day in which the same is used or occupied by said vessel. R. S. c. 93, § 8; 33 Me. 479; 34 Me. 206; 36 Me. 387; 40 Me. 292, 411; 41 Me. 399; 42 Me. 81, 147; 58 Me. 98; 61 Me. 567; 69 Me. 235; 70 Me. 351; 71 Me. 464, 494; 72 Me. 129; 80 Me. 522.

The form of a writ for enforcing such lien, shall be in substance as follows:

STATE OF MAINE.

_____, ss.

To the sheriff of our county of _____, or his deputy,

[L. s.]

GREETING.

We command you to attach the vessel [*here give such a description of the vessel as will identify it*] and summon all persons interested, in the manner

directed by law, to appear before our justices of our — court, next to be held at —, within and for our county of —, on the — Tuesday of — next, then and there in our said court to answer to A. B., of —, who claims a lien on said vessel for [*here describe briefly the nature of the lien*] to the amount of — dollars and — cents, according to the specification hereto annexed, which amount, C. D., of —, who owes the same, neglects and refuses to pay, to the damage of said A. B., as he says, the sum of — dollars, which shall then and there be made to appear, with other due damages; and have you there this writ with your doings thereon.

Witness, —, Esquire, our —, at —, on the — day of —, in the year of our Lord, nineteen hundred and —.

E. F., *Clerk.*

Said writ shall be signed, sealed and tested like other writs in civil actions, and returned in the county where said vessel is. R. S. c. 93, § 9; 61 Me. 567; 69 Me. 237.

The specification annexed to the writ, shall contain a just, true and particular account of the demand claimed to be due the plaintiff, with all just credits; the names of the persons personally liable to him, and names of the owners of the vessel if known to him, and it shall be verified by the oath of one plaintiff, or of some person in his behalf, that the amount claimed in said specification is justly due from the person named in the writ and specification as owing it, and that he believes that by the law of the state, he has a lien on such vessel for the whole or a part thereof. R. S. c. 93, § 10; 61 Me. 588; 69 Me. 237.

If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within forty-eight hours thereafter, a copy of so much of his return on the writ, as relates to the attachment, with the name of the plaintiff, the name of the person liable for the debt, the description of the vessel as given in the writ, the date of the writ, the amount claimed and the court to which it is returnable, and by leaving a copy of such certificate with one of the owners of the vessel, if known to him and residing within his precinct, or with the master workman thereon; if the attachment is so made, the officer need not take possession of the vessel before it is launched, unless specially directed by the plaintiff or his attorney to do so; but he shall, as soon as may be, afterwards; he may take possession at any time before it is launched; but if he does, he shall not hinder the work thereon, or prevent or delay the launching. If at the time of attachment, the vessel is launched, it shall be attached like other personal property. And whenever a vessel has been attached as aforesaid, and the

expense of retaining possession of said vessel is great, or the vessel is liable to depreciate in value by reason thereof, any attaching creditor, or an owner of said vessel may in term time or vacation, petition a justice of the supreme judicial court, praying that said vessel attached as aforesaid, may be sold, and said justice may order a hearing thereon; and due notice shall be given to all parties in interest, of the time and place appointed for said hearing, and a hearing on said petition shall be had before a justice of said court; and if it then appears to said justice to be for the benefit of all parties in interest that said vessel should be sold, he shall issue to the officer in possession of the same, or to the sheriff of the county in which said vessel has been attached, an order to sell it at public auction, and shall designate in said order the notice to be given of the time and place of said sale; and said vessel shall be sold pursuant to said order, and the proceeds of such sale, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments, as if sold on execution; *provided, however*, that if said parties do not consent to a sale as herein provided, the provisions of sections thirty-two to forty-one, inclusive, of chapter eighty-three, so far as the same are applicable, shall apply to proceedings under this section. R. S. c. 93, § 11; 58 Me. 99; 75 Me. 444.

The writ shall be served on persons named as personally liable for the plaintiff's claim, as in other personal actions against them, or on the owners of the vessel, who are known or reside in the county where the vessel is, by a notice in substance, as follows, and served as summonses are:

—, ss.

To the owners of the ship or vessel [*describe it as in writ*],

GREETING.

Take notice that the above described vessel is attached on a writ in favor of —, who claims a lien thereon for the sum of — dollars and — cents [*naming the amount of the claim*], due him by C. D., and that said writ is returnable to the — court at the term to be held at —, in and for the county of —, on the — Tuesday of —, A. D. 19—, when and where you may appear and defend if you see fit.

Dated, etc.

G. H., Sheriff [*or Deputy Sheriff*].

and by a notice in like form posted in some conspicuous place on the vessel attached. The attachment, service and notices shall be made fourteen days at least before the term of the court to which the writ is returnable. R. S. c. 93, § 12.

On all writs made after the first attachment and while any lien attachment is pending, the attachment and services shall be made as aforesaid by the same officer, or, if he is disqualified, by any qualified officer, by his giving notice thereof to the first attaching officer. R. S. c. 93, § 13.

At the return term, the actions shall be entered on the docket as follows: The person claiming the lien, as plaintiff; the person alleged to be personally liable, as defendant, and the name or other description of the vessel attached; and the owners or mortgagees of the vessel, or any plaintiff in a suit wherein it is attached for a lien, may appear and defend any action so far as relates to the validity and amount of the lien claim; but no such plaintiff shall so defend until he gives bond, to the satisfaction of the court, to pay the costs awarded against him. R. S. c. 93, § 14.

The defendant may offer to be defaulted as in other cases; and the owners of the vessel may admit, in writing filed with the clerk, that a certain sum is due the plaintiff as a lien on the vessel; and if the plaintiff does not recover a greater sum as lien, he recovers no costs against such owner or the vessel or its proceeds, after the admission is filed; but such owner recovers costs thereafter. R. S. c. 93, § 15; 58 Me. 100; 69 Me. 240.

The court, except as provided in the preceding section, may decide all questions of costs and apportion them as they think proper, as in cases in equity. R. S. c. 93, § 16; 61 Me. 498.

At the request of either party, the following questions of fact shall be submitted to a jury: "What amount claimed in the writ is due from the defendant to the plaintiff?" and "For how much of such amount has the plaintiff a lien on the vessel attached?" And the verdict shall be in answer to these questions. If the parties waive a jury trial, these questions shall be decided by the court, on a hearing or report of an auditor appointed by the court. R. S. c. 93, § 17; 58 Me. 100; 69 Me. 240.

Upon ascertaining the amount aforesaid, judgment shall be rendered in his favor against the defendant, as in other personal actions, for the amount found not to be a lien on the vessel, with such costs as the court awards; and a separate judgment shall be rendered in his favor against said defendant and the vessel attached, for the amount decided to be a lien, with such costs as the court awards; and separate executions shall be issued

thereon. R. S. c. 93, § 18; 58 Me. 100; 61 Me. 567; 69 Me. 240.

Parties have the same right of exceptions, motions for new trial and writs of error, as in other actions. R. S. c. 93, § 19.

When judgment is recovered in any suit on which a vessel was attached, the court may issue an order, to the attaching officer to sell it at auction, and to pay the proceeds thereof into court after deducting the expenses of sale and for taking care of the vessel while under attachment. Such officer shall sell it as other personal property is sold on execution; and the purchaser shall hold it free from any prior claim. R. S. c. 93, § 20; 58 Me. 100; 61 Me. 567; 76 Me. 447.

If such proceeds are more than all the judgments recovered against such vessel, and the amounts claimed in the undecided suits, the court may order the judgments, as fast as they are recovered against said vessel, to be paid from said fund until all such suits are terminated and all judgments satisfied. The balance, if any, the court may, on petition, order to be paid to the persons legally entitled thereto. R. S. c. 93, § 21; 76 Me. 447.

If such proceeds are not enough to pay in full the judgments recovered and the claims still undecided, the court may order the money to remain until all the suits are terminated, and then divide pro rata; or it may direct a sufficient amount to be retained to pay on the undecided claims their proportion, and divide the residue ratably among the judgments recovered, and if, after all the suits are terminated and the judgments recovered subsequent to the first division have received the same proportion as prior judgments, there is any sum remaining, it shall be divided among the judgments pro rata, and in such division the court shall make such orders as will prevent the enforcement of a double lien, and will secure the just rights of all. R. S. c. 93, § 22.

If the vessel has been already attached by a sheriff or his deputy, when a writ is issued for such lien claim, such writ shall be served by such officer; if attached by a constable, he shall give up to the officer having the lien writ, the possession and the precept upon which he attached it with his return of the facts thereon; and the attachment shall hold subject to the legal priorities of the lien claim. R. S. c. 93, § 23; 61 Me. 567.

A vessel attached for a lien claim, may be attached by the same officer, in the ordinary manner, in a suit against the owners

thereof, and such attachment shall be valid, subject to the legal priorities of the lien attachments. R. S. c. 93, § 24.

When a vessel attached for liens, and also in the ordinary manner, is sold by order of the court, and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer, to be held upon the writs not founded on the lien claims. R. S. c. 93, § 25.

The court like a court in admiralty, may make all orders necessary for carrying out the provisions hereof, according to their true intent and meaning. R. S. c. 93, § 26.

Whoever digs, hauls or furnishes rock for the manufacture of lime, has a lien thereon for his personal service, and on the rock so furnished, for thirty days after such rock is manufactured into lime, or until such lime is sold or shipped on board a vessel; whoever labors in quarrying or cutting and dressing granite in any quarry, has a lien for his wages on all the granite quarried or cut and dressed in the quarry by him, or his co-laborers, for thirty days after such granite is cut and dressed, or until such granite is sold or shipped on board a vessel; and whoever labors in mining, quarrying or manufacturing slate in any quarry, has a lien for the wages of his labor on all slate mined, quarried or manufactured in the quarry by him or his co-laborers for thirty days after the slate arrives at the port of shipment, and until it has been shipped on board a vessel or laden in a car; such liens have precedence of all other claims, and may be enforced by attachment within the times aforesaid. R. S. c. 93, § 27; 72 Me. 423; 73 Me. 161, 209.

Whoever performs labor, or furnishes labor or wood for manufacturing and burning bricks has a lien on such bricks for such labor and wood, for thirty days after the same are burned, suitable for use, *provided*, that said bricks remain in the yard where burnt; such lien shall have precedence of all other claims and of all attachments and encumbrances not made to secure a similar lien and may be enforced by attachment within the time aforesaid. R. S. c. 93, § 28; 78 Me. 227.

Whoever performs labor or furnishes labor or materials in erecting, altering, moving or repairing a house, building or appurtenances, or in constructing, altering or repairing a wharf, or pier, or any building thereon, by virtue of a contract with or by consent of the owner, has a lien thereon, and on the land on which it stands and on any interest such owner has in the same, to secure payment thereof, with costs. If the owner of the

building has no legal interest in the land on which the building is erected, or to which it is moved, the lien attaches to the building, and if the owner of the wharf or pier has no legal interest in the land on which the wharf or pier is erected, the lien attaches to the wharf or pier, and in either case may be enforced as hereinafter provided, and if the owner of such land, building, wharf or pier so contracting, is a minor or married woman, such lien shall exist, and such minority or coverture shall not bar a recovery in any proceeding brought to enforce it. R. S. c. 93, § 29; 16 Me. 273; 28 Me. 520; 33 Me. 144, 374; 34 Me. 199; 35 Me. 74, 297, 482; 52 Me. 301; 54 Me. 348; 71 Me. 292; 73 Me. 353; 74 Me. 552; 75 Me. 76; 83 Me. 136, 503; 85 Me. 336, 359; 87 Me. 274; 91 Me. 116, 559; 92 Me. 22; 97 Me. 99; 103 Me. 67.

If the labor or materials were not furnished by a contract with the owner of the property affected, the owner may prevent such lien for labor or materials not then performed or furnished by giving written notice to the person performing or furnishing the same, that he will not be responsible therefor. R. S. c. 93, § 30; 73 Me. 354; 75 Me. 79; 87 Me. 276; 103 Me. 67.

The lien mentioned in the preceding section shall be dissolved unless the claimant within sixty days after he ceases to labor or furnish materials as aforesaid, files in the office of the clerk of the town in which such building, wharf or pier is situated, a true statement of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate to identify it, and the names of the owners, if known; which shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and recorded in a book kept for that purpose, by said clerk, who is entitled to the same fees therefor as for recording mortgages, but this section shall not apply where the labor or materials are furnished by a contract with the owner of the property affected. R. S. c. 93, § 31; 72 Me. 108; 79 Me. 285; 83 Me. 136, 503; 85 Me. 336; 91 Me. 116, 559; 94 Me. 534.

No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor or materials, invalidates the proceedings, unless it appears that the person making it willfully claims more than his due. R. S. c. 93, § 32; 83 Me. 138, 503.

The liens mentioned in the four preceding sections may be preserved and enforced by bill in equity against the debtor and

owner of the property affected, and all other parties interested therein, filed with the clerk of courts, in the county where the house, building or appurtenances, wharf, pier or building thereon, on which lien is claimed, is situated, within ninety days after the last of the labor is performed, or labor or materials are so furnished, and not afterwards, except as provided in the following section. R. S. c. 93, § 33; 35 Me. 297; 54 Me. 350; 71 Me. 293; 79 Me. 285; 87 Me. 436; 89 Me. 231; 91 Me. 424.

When the owner dies, is adjudicated a bankrupt or a warrant in insolvency issues against his estate within the ninety days and before the commencement of a suit, the action in law or equity may be commenced within sixty days after such adjudication, or after notice given of the election or appointment of the assignee in insolvency, executor or administrator, or the revocation of the warrant; and the lien shall be extended accordingly. R. S. c. 93, § 34; 89 Me. 231.

The bill shall state that the plaintiff claims a lien on the house, building or appurtenances, or on the wharf, pier or building thereon, as the case may be, described therein, and the land on which it stands, for labor performed, or for labor or materials furnished, in erecting, altering, moving or repairing said house, building or appurtenances, or in constructing, altering or repairing said wharf, pier or building thereon, as the case may be; whether it was by virtue of a contract with, or by consent of the owner, and if not, that the claimant has complied with the provisions of section thirty-one. And the bill shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a bill. Other lienors may be made parties; other lienors may become parties, and preserve and enforce their liens on said property, *provided*, their petitions therefor, setting forth their claims in substance, as required in a bill as aforesaid, be filed with the clerk within ninety days after the last labor is performed, or the last labor or materials are furnished by them, as aforesaid, or within the additional time prescribed in the preceding section. The court may consolidate two or more bills claiming liens on the same property, into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in said property, may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding. R. S. c. 93, § 35.

The court shall determine the amount for which each lienor has a lien upon the property, by jury trial, if either party so requests in bill, petition or answer; otherwise in such manner as the court shall direct. And such determination shall be conclusive as to the fact and amount of the lien subject to appeal and exceptions according to the practice in equity. Any lienor may contest another lienor's claim upon issues framed under direction of the court. R. S. c. 93, § 36.

If it is determined that the parties or any of them, claiming a lien, have a lien upon said building and land, or upon said wharf, pier, building and land, the court may decree that said property, or such interest in it as is subject to the liens, or any of them, shall be sold, and shall prescribe the place, time, terms, manner and conditions of such sale; any justice, in term time or vacation, may order an adjournment of such sale from time to time; and a deed of the officer of the court, appointed to make such sale, recorded in the registry of deeds where the land lies, within three months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court may provide in the order of sale, that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land, on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The lienors shall share, pro rata; *provided*, their bills or petitions therefor are filed with the clerk of courts prior to the order of sale, and within the time mentioned in sections thirty-three, thirty-four and thirty-five. The court may make such decree in regard to costs as is equitable. R. S. c. 93, § 37.

If the proceeds of the sale after payment of costs and expenses of sale, are insufficient to pay the lien claims and costs in full, the court may render judgment against the debtor in favor of each individual lienor, for the balance of his claim and costs remaining unpaid, and may issue executions therefor. If the proceeds of sale after the payment of costs and expenses of sale, are more than sufficient to pay the lien claims and all costs in full, the balance remaining shall be paid to the person or persons legally or equitably entitled thereto. R. S. c. 93, § 38.

When any bill or petition provided for in this chapter in which a lien is claimed on real estate is filed with the clerk, he shall forthwith file a certificate, setting forth the names of the

parties, the date of the bill or petition, and of the filing thereof, and a description of the said real estate as described in said bill or petition, in the registry of deeds for the county or district in which the land is situated. R. S. c. 93, § 39.

In addition to the remedy hereinbefore provided, the liens mentioned in sections twenty-nine, thirty, thirty-one and thirty-two may be enforced by attachment in actions at law commenced in any court having jurisdiction, in the county where the property, on which a lien is claimed is situated, which attachment shall be made within ninety days after the last of the labor is performed, or labor or materials are furnished, and not afterwards, except as provided in section thirty-four. R. S. c. 93, § 40; 35 Me. 297; 54 Me. 350; 71 Me. 293; 79 Me. 285; 87 Me. 436; 89 Me. 231; 91 Me. 424.

Any owner of a building, wharf, pier or real estate, upon which a lien is claimed, may petition in writing a justice of the supreme judicial court in term time or vacation, setting forth the name of the lienor, the court and county in which the bill in equity or action at law is returnable or pending, the fact that a lien is claimed thereon under sections twenty-nine, thirty, thirty-one and thirty-two of this chapter, the particular building, wharf, pier or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice, which shall be served on the lienor, or his attorney, ten days at least, prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor, in such amount and with such sureties as he may approve, conditioned to pay the amount, for which such lienor may be entitled to a lien, as determined by the court, with his costs on the petition, within thirty days after final decree or judgment. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office; and the record of such copy and certificate in the registry of deeds, in the county where such real estate or interest therein lies, vacates the lien. R. S. c. 93, § 41.

When two or more proceedings, either at law or in equity, are pending at the same time, in whatever court or courts, to enforce liens on the same house, building or appurtenances, wharf, pier and building thereon, upon petition of any lienor who has commenced such proceedings, or of the owner of the building, wharf or pier, a justice of the supreme judicial court after notice and

hearing, in term time or vacation, may, if justice requires it, order all such actions not then pending in the supreme judicial court to be transferred thereto, and require the parties in all such proceedings, in whatever court commenced, to plead in equity, substantially in the manner prescribed in section thirty-five, and thereafter all the proceedings shall be in accordance with the provisions of said section and the five following sections; and while such petition is pending all such actions shall stand continued. R. S. c. 93, § 42.

When a judgment is rendered in any suit authorized by this chapter, against any house, building or appurtenances, wharf, pier or building thereon, and the land on which it stands, or any interest that the owner of such house, building or appurtenances, wharf or pier has in such land, said property shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If two or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under the provisions of this chapter shall be notified in writing by any lienor who has caused said property to be attached as aforesaid, or who has filed his bill in equity as herein provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments, and all lienors so notifying such officer otherwise direct, shall thereupon sell said property as aforesaid, and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which any such lien suit is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made, may fix the time within which the owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall be paid to the person or persons legally or equitably entitled thereto. R. S. c. 93, § 43.

When a lease of land, with a rent payable is made for the purpose of erecting a mill or other buildings thereon, such buildings and all the interest of the lessee are subject to a lien and liable to be attached for the rent due. Such attachment, made within

six months after the rent becomes due, is effectual against any transfer of the property by the lessee. R. S. c. 93, § 44.

In all cases where land rent accrues and remains unpaid, whether under a lease, or otherwise, all buildings upon the premises while the rent accrues, are subject to a lien and to attachment for the rent due, as provided in the preceding section, although other persons than the lessee may own the whole or a part thereof, and whether or not the land was leased for the purpose of erecting such buildings: *provided, however*, that if any person except the lessee, is interested in said buildings, the proceedings shall be substantially in the forms directed for enforcing liens against vessels, with such additional notice to supposed or unknown owners, as any justice of the supreme judicial court orders, or the attachment and levy of execution shall not be valid except against the lessee. R. S. c. 93, § 45; 93 Me. 344.

Whoever labors at cutting, hauling, rafting or driving logs or lumber, or at cooking for persons engaged in such labor, or in shoeing horses or oxen, or repairing property while thus employed, has a lien on the logs and lumber for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens reserved to the state; whoever both shores and runs logs by himself, his servants or agents, has a lien thereon for the price of such shoring and running; such liens continue for sixty days after the logs or lumber arrived at the place of destination for sale or manufacture, and may be enforced by attachment. R. S. c. 93, § 46; 9 Me. 22; 24 Me. 219; 33 Me. 291, 431; 34 Me. 276, 287; 35 Me. 128; 36 Me. 538, 544; 38 Me. 82, 131; 43 Me. 585; 45 Me. 319, 567; 46 Me. 365; 49 Me. 77; 56 Me. 152, 298; 66 Me. 57, 67; 71 Me. 118; 72 Me. 440; 74 Me. 240; 77 Me. 135; 79 Me. 22; 81 Me. 136; 89 Me. 174, 178; 90 Me. 227; 92 Me. 336, 338; 93 Me. 168; 95 Me. 528; 97 Me. 506.

The officer making such attachment may pay the boorage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ, which shall be included in the damages recovered. The action or lien is not defeated by taking a note, unless it is taken in discharge of the amount due and of the lien. Such notice of the suit, as the court orders, shall be given to the owner of the logs or lumber, and he may be admitted to defend it. R. S. c. 93, § 47; 35 Me. 128; 41 Me. 471; 43 Me. 456, 585; 47 Me. 144, 156; 50 Me. 430; 61 Me. 489, 493; 66 Me. 140; 89 Me. 174.

Whoever drives logs or lumber by contract with the owner, or with any other person, has a lien on said logs or lumber for the amount payable under said contract, which takes precedence of all other claims, except liens for labor, for stumpage, and for towing, continues for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment. When the contract is made with any person other than the owner of the logs or lumber, actual notice in writing shall be given to the owner before work is begun, stating therein the terms of the contract. If the owner, at the time said notice is given him, or immediately thereafter, notifies said contractor in writing, that he will not be responsible for the amount payable or to become payable under said contract, then said contractor shall not have a lien on said logs or lumber so driven. R. S. c. 93, § 48.

Owners of steamboats employed in towing logs or lumber on any of the inland waters of the state, have a lien on such logs or lumber for the amount due for such towing; such lien continues for sixty days after the logs or lumber arrive at the place of destination for sale or manufacture, and may be enforced by attachment. Said lien shall take precedence of all other claims except liens reserved to the state, liens for labor and for stumpage. R. S. c. 93, § 49.

Whoever labors at cutting, peeling or hauling hemlock bark or cutting, yarding or hauling cord wood or pulp wood or any wood used in the manufacture of pulp wood, or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal service and the service performed by his team, which takes precedence of all other claims and continues for thirty days after the contract is completed and may be enforced by attachment. R. S. c. 93, § 50; 93 Me. 168.

Whoever labors in the manufacturing of last blocks, or cuts or furnishes wood for the manufacture of the same, or is engaged in cooking for persons engaged in such labor, or furnishes a team for the hauling of said last blocks or the lumber from which they are manufactured, has a lien on said last blocks for the amount due him for his personal labor thereon, or the services of his team, and for the amount due for wood so cut or furnished, which takes precedence of all other claims, except liens reserved to the state, continues for thirty days after the said last blocks are stored or housed for drying purposes, and may be enforced by attachment. R. S. c. 93, § 51.

Whoever labors in the manufacturing of railroad ties and ship knees, or is engaged in cooking for persons engaged in such labor, or furnishes a team for the hauling of said railroad ties and ship knees, has a lien on said railroad ties and ship knees for the amount due him for his personal labor thereon, or the services of his team, which takes precedence of all other claims, except liens reserved to the state, continues for thirty days after said railroad ties are on the line of a railroad, or after said ship knees are delivered in a shipyard, and may be enforced by attachment. R. S. c. 93, § 52.

Whoever labors at cutting, hauling or sawing of spool timber or in the manufacture of spool timber into spool bars and the piling of such bars or at cooking for persons engaged in such labor, has a lien thereon for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims, continues for sixty days after such timber or spool bars arrive at the place of destination for sale or manufacture, and may be enforced by attachment. R. S. c. 93, § 53.

Whoever labors in cutting or harvesting hay has a lien on all the hay cut or harvested by him and his co-laborers for the amount due for his personal services and the services performed by his team, which takes precedence of all other claims except liens reserved to the state, continues for thirty days after the last of such services are performed and may be enforced by attachment. R. S. c. 93, § 54.

Whoever presses hay or straw has a lien on all hay or straw so pressed for the amount due for such pressing, which takes precedence of all other claims except liens reserved to the state and the liens specified in the preceding section, continues for thirty days after said pressing is completed and may be enforced by attachment. R. S. c. 93, § 55.

Whoever furnishes corn or other grain or fruit, for canning or preservation otherwise, has a lien on such preserved article, and all with which it may have been mingled, for its value when delivered, including the cans and other vessels containing the same, and the cases, for thirty days after the same has been delivered, and until it has been shipped on board a vessel or laden in a car, which lien may be enforced by attachment within that time. R. S. c. 93, § 56.

Whoever performs labor in any tannery where leather of any kind is manufactured completely or partially, whether such labor

is performed directly on the hides and skins or in any capacity in or about the establishment, has a lien for his wages on all leather so manufactured in such tannery for labor performed by him or his co-laborers, which continues for thirty days after such leather is made and manufactured, and until such leather is shipped on board a vessel or taken in a car, and may be enforced by attachment within that time. R. S. c. 93, § 57.

There shall be a lien on all colts foaled in the state, to secure the payment of the service fee, for the use of the stallion begetting the same. Such lien shall continue in force until the foal is six months old, and may be enforced during that time by attachment of such foal. R. S. c. 93, § 58; 93 Me. 226.

Whoever pastures, feeds or shelters animals by virtue of a contract with or by consent of the owner, has a lien thereon for the amount due for such pasturing, feeding, or sheltering, and for necessary expenses incurred in the proper care of such animals and in payment of taxes assessed thereon, to secure payment thereof with costs, to be enforced in the same manner as liens on goods in possession and choses in action; and the court rendering judgment for such lien shall include therein a pro rata amount for such pasturage, feed and shelter provided by the lienor from the date of the commencement of proceedings to the date of said judgment. R. S. c. 93, § 59.

Lien on animals for entry fee at agricultural fairs and races, R. S. c. 60, § 27; on animals in transit for expenses of proper care, R. S. c. 125, §§ 45-46; for food, shelter and care furnished to abandoned or neglected animals, R. S. c. 125, § 51; 63 Me. 533; 69 Me. 425; 76 Me. 444; 79 Me. 220; 91 Me. 144; 96 Me. 348.

Whoever under express contract fixing the price to be paid by the other party thereto, sells, erects or furnishes any monument, tablet, headstone, vault, posts, curbing or other monumental work, has a lien thereon to secure the payment of such contract price, which continues for two years after the completion, delivery or erection of such monument, tablet, headstone, vault, posts, curbing or other monumental work, to be enforced by suit and attachment; such attachment to be recorded within said two years by the clerk of the town in which the property subject to the lien is then situated; or such lien may be enforced by petition setting forth the names and residences of the parties to the contract, the contract price, the sum due, the description and location of the property on which the lien is claimed and such other facts as are necessary to make it appear that such petitioner

is entitled to an enforcement of such lien, and praying for judgment, for title and possession of the property therein described. Said petition, before service thereof, and within said two years, shall be recorded by the clerk of the town in which such property is situated, and a certificate of such record endorsed thereon. The sum alleged to be due shall be deemed to be the damage demanded, and the petition, after being recorded, may be inserted in a writ, and made returnable, like other writs in transitory actions, before any court of competent jurisdiction. If the defendant is a known resident of the state he shall be served with a summons and copy of said writ and petition, otherwise the court, in term time or vacation, may order notice. If the petitioner prevails, he shall recover judgment for title and possession of the property on which the lien is claimed, and for his costs, and a possessory execution may issue. By virtue of such judgment the judgment creditor, if unopposed, may take possession and remove the property described in his execution, otherwise any officer qualified to serve civil process, having said execution, may take possession of said property and deliver the same to the judgment creditor, and shall make his return on said execution accordingly. Said lien may be discharged at any time before final judgment by tendering the petitioner the amount of the debt and costs. R. S. c. 93, § 60.

Whoever performs labor by himself or his employees in manufacturing, or repairing the ironwork or woodwork of wagons, carts, sleighs and other vehicles by direction or consent of the owner thereof, shall have a lien on such vehicle for his reasonable charges for said labor and materials used. P. L. 1905 c. 57, § 1.

Such lien shall have precedence of all other claims and incumbrances on said vehicles not made to secure a similar lien and may be enforced as hereinafter specified; said lien, however, shall be dissolved if said property has actually changed ownership prior to the filing of said lien claim in the town clerk's office as herein required. P. L. 1905 c. 57, § 2.

The lien mentioned in the preceding sections shall be dissolved unless the claimant within thirty days after the labor is performed, files in the office of the clerk of the town in which the owner of such vehicle resides a true statement of the amount due him for such labor with all just credits given together with a description of the vehicle manufactured or repaired sufficient to identify it and the name of the owner, which shall be sub-

scribed and sworn to by the person claiming the lien or by some one in his behalf and recorded in a book kept for that purpose by the clerk, who is entitled to the same fees therefor as for recording mortgages. P. L. 1905 c. 57, § 3.

No inaccuracy in such statement relating to said property, if the same can be reasonably recognized, or in stating the amount due for labor or materials invalidates the proceedings, unless it appears that the person making it willfully claims more than his due. Such lien may be enforced by a writ or attachment at any time within ninety days after the labor is performed and not afterwards, provided said lien claim is duly filed as herein required. P. L. 1905 c. 57, § 4.

Suits to enforce any of the liens before named have precedence of attachments and encumbrances made after the lien attached, and not made to enforce a lien, and may be maintained although the employer or debtor is dead and his estate has been represented insolvent; and his executor or administrator may be summoned and held to answer to an action brought to enforce the lien. The declaration must show that the suit is brought to enforce the lien; but all the other forms and proceedings therein, shall be the same as in ordinary actions of assumpsit. R. S. c. 93, § 61; 28 Me. 520; 33 Me. 144, 292; 34 Me. 281, 287; 35 Me. 297; 36 Me. 387; 37 Me. 552; 38 Me. 131; 41 Me. 371; 42 Me. 81, 130, 149; 45 Me. 295, 319; 50 Me. 430; 53 Me. 321; 61 Me. 494, 497; 63 Me. 564; 65 Me. 577; 66 Me. 58; 77 Me. 421; 89 Me. 174, 178, 232.

All liens named herein may be discharged by tender of the sum due, made by the debtor or owner of the property, or his agents. R. S. c. 93, § 62; 66 Me. 59.

In all lien actions, when the labor or materials were not furnished by a contract with the owner of the property affected, such owner may voluntarily appear and become a party to the suit. If he does not so appear, such notice of the suit as the court orders, shall be given him, and he shall then become a party to the suit. R. S. c. 93, § 63; 69 Me. 425; 78 Me. 79; 89 Me. 174, 233.

In any such action, judgment may be rendered against the defendant and the property covered by the lien, or against either, for so much as is found due by virtue of the lien, and if the amount due exceeds the amount so covered, then a separate execution shall be issued to the plaintiff against the defendant for such excess, and the plaintiff may discontinue as to any defend-

ant. The court may apportion costs as justice requires. R. S. c. 93, § 64; 79 Me. 285; 89 Me. 175.

Innholders or keepers of boarding-houses have a lien on the goods and personal baggage of their guests and boarders, to secure the payment of any money due from them for board or lodging, and may enforce the same by a sale of such goods or baggage, in the manner following. After such goods or personal baggage have remained in the possession of such innholder or boarding-house keeper for six months, unredeemed, they may be sold at auction to pay the sum due for board or lodging, and the expense of advertising and selling the same. Such innholder or boarding-house keeper shall give thirty days' notice of the time and place of such sale, in a newspaper published in the town where such articles are held, if any, otherwise notice thereof shall be posted in three conspicuous places therein; said notice shall give a description of such articles, and the name of the owner; and the proceeds of sale, after deducting all charges and expense of advertising and notice, shall be applied in satisfaction of the claim upon which such articles are sold, and the balance, if any, shall be held for the benefit of the person entitled thereto. All such sales shall be recorded in the office of the town clerk where the sale takes place, in a suitable book open to public inspection, in which the articles sold shall be correctly described, with the charges and expenses of advertising and selling, and the prices at which they were sold. R. S. c. 93, § 65; 35 Me. 154; 38 Me. 192; 42 Me. 51.

Whoever has a lien on or pledge of any stock or certificate thereof, bond, note, account or other chose in action, or on any other personal property in his possession, may enforce it by a sale thereof, in the manner provided in the contract creating such lien or pledge, if in writing, or as hereinafter provided. R. S. c. 93, § 66; 69 Me. 428; 76 Me. 445.

The person claiming the lien may file, in the supreme judicial or superior court in the county where he resides, or in the office of the clerk thereof, a petition briefly setting forth the nature and amount of his claim, a description of the article possessed, and the names and residences of its owners, if known to him, and a prayer for process to enforce his lien. R. S. c. 93, § 67; 76 Me. 445; 96 Me. 348.

If the owners are set forth in a petition filed in the clerk's office, and are residents of the state, the clerk may issue an order of notice, to be given by serving them with a copy of the petition

and order thereon, fourteen days before the next term of the court in such county. R. S. c. 93, § 68.

If the owners are not known, or are not residents of the state, or if the petition is filed in court, the court may order reasonable notice of at least fourteen days to them and to others interested, returnable at the same or a subsequent term; to be given by personal service of a copy of the petition with the order of court thereon, or by publication in a newspaper, or both, as the court directs. R. S. c. 93, § 69.

At the time fixed in the notice, any party interested in the article as owner, mortgagee or otherwise, may appear, and after appearance, the proceedings shall be the same as in an action on the case in which the petitioner is plaintiff and the party appearing is defendant. Questions of fact, at the instance of either party, shall be submitted to a jury on an issue framed under the direction of the court. R. S. c. 93, § 70; 96 Me. 348.

If, in the opinion of the court, the article on which the lien is claimed is not of sufficient value to pay the petitioner's claim, with the probable costs of suit, the court may order the person appearing in defense to give bond to the petitioner, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed. R. S. c. 93, § 71.

After trial and final adjudication in favor of the petitioner, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the petitioner the amount and costs awarded him, and the balance to the person entitled to it, if he is known to the court, otherwise into court. R. S. c. 93, § 72; 76 Me. 445.

Money paid into court may be paid over to the person legally entitled to it, on petition and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury; and if afterwards the person entitled to it petitions and establishes his claim to it, the court may order the county treasurer to pay it to him. R. S. c. 93, § 73.

Liens for less than twenty dollars, may be enforced before any trial justice for the county where the person having the lien resides, and all proceedings, rights and liabilities, shall be the same as hereinbefore provided, so far as the nature of the tri-

bunal admits; and either party may appeal, as in other cases. R. S. c. 93, § 74; 96 Me. 348.

Municipal and police courts have jurisdiction concurrent with the supreme judicial and superior courts and trial justices in their respective counties, of liens, and proceedings relative thereto, for an amount not exceeding their jurisdiction in other civil actions, to be enforced as provided in this chapter. R. S. c. 93, § 75; 96 Me. 348.

The holder of stocks, bonds or other personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, sell such stocks, bonds or other personal property in the manner provided in the contract creating the pledge, if in writing, or he may proceed as hereinafter provided. He may give written notice to the pledger that he intends to enforce payment by a sale of the pledge; and shall serve the same by leaving a copy with the pledger, if his residence is known to the holder, otherwise by publishing it at least once a week for three successive weeks, in one of the principal newspapers, if any, in the city or town where the pledgee resides, otherwise, in one of the principal newspapers published in the county, or in the state paper. Such notice, together with an affidavit of service, shall be recorded in the clerk's office of the city or town where the pledgee resides. R. S. c. 93, § 76; 96 Me. 43, 430.

If the money to be paid or the thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the holder may sell the pledge at public auction, and apply the proceeds to the satisfaction of the debt or demand and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto on demand. R. S. c. 93, § 77; 96 Me. 43, 430.

Whenever the amount due for the use of any safe or box, in the vaults of any safe deposit company, shall not have been paid for three years, such corporation may, at the expiration of such period, notify the person in whose name such safe or box stands on its books, by a notice in writing in a securely closed, post paid, registered letter, directed to such person at his post office address as recorded upon the books of the corporation, that if the amount then due for the use of such safe or box, is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box, to be opened in the manner hereinafter provided; at the expiration of sixty days after the

mailing of said notice, the corporation may then cause such safe or box, to be opened in the presence of its president, secretary or treasurer, and of a notary public not an officer, or in the employ of the corporation, and the contents of said safe or box, shall then be sealed up by such notary public in a package and a certificate of such sealing shall be indorsed thereon, signed by such notary and attested by his seal, and said package shall be distinctly marked with the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof; said package shall then be placed in one of the general safes or boxes of the corporation, and shall be held subject to redemption by the owner thereof, who shall be required to pay the rent due for said safe or box, and all costs and damages attending the opening thereof together with reasonable charges for the custody of said package by the corporation, and the corporation shall have a lien upon said package to secure the payment of such rent, damages and charges. R. S. c. 93, § 78.

CHAPTER XCIV.

ADOPTION AND PROTECTION OF CHILDREN.

Any unmarried inhabitant of the state, or any husband and wife jointly, may petition the judge of probate for their county, for leave to adopt a child not theirs by birth, and for a change of his name. R. S. c. 69, § 32; 81 Me. 554.

Before such petition is granted, written consent to such adoption must be given by the child, if of the age of fourteen years, and by each of his living parents, if not hopelessly insane or intemperate; or, when a divorce has been decreed to either parent, written consent by the parent entitled to the custody of the child; or such consent by one parent, when, after such notice to the other parent as the judge deems proper and practicable, such other parent is considered by the judge unfit to have the custody

of the child. If there are no such parents, or if the parents have abandoned the child and ceased to provide for its support, consent may be given by the legal guardian; if no such guardian, then by the next of kin in the state; if no such kin, then by some person appointed by the judge to act in the proceedings as the next friend of such child; if an illegitimate child, and under the age of fourteen years, such consent may be given by the mother of such child. R. S. c. 69, § 33.

Thereupon, if the judge is satisfied of the identity and relations of the parties; of the ability of the petitioners to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child is the child of the petitioners, and that his name is thereby changed, without requiring public notice thereof. R. S. c. 69, § 34; 85 Me. 400; 97 Me. 85, 580.

By such decree the natural parents are divested of all legal rights in respect to such child, and he is freed from all legal obligations of obedience and maintenance in respect to them; and, for the custody of the person and all rights of inheritance, obedience and maintenance, he becomes to all intents and purposes, the child of his adopters, the same as if born to them in lawful wedlock, except that he shall not inherit property expressly limited to the heirs of the body of the adopters, nor property from their lineal or collateral kindred by right of representation, and *provided*, that the right of inheritance only applies to adoptions made since February twenty-four, eighteen hundred and eighty, and where not otherwise expressly provided in the decree of adoption; and the adoption of a child, made in any other state before or since said date, according to the laws of that state, shall have the same force and effect in this state, as to inheritance and all other rights and duties as it had in the state where made, in case the person adopting thereafter dies domiciled in this state. In case of the death of such adopted child before arriving at the age of twenty-one years, unmarried and without issue, all property which such child shall have received by virtue of such adoption, in whatever form it may then be, and not expended for his or her support, shall descend the same as if such child were the child by birth of his adopters. R. S. c. 69, § 35; 84 Me. 486; 87 Me. 213; 97 Me. 580.

Any petitioner, or any such child by his next friend, may appeal from such decree to the supreme court of probate, in the same manner and with the same effect, as in other cases, but no bond to prosecute his appeal shall be required of such child or next friend, nor costs be awarded against either. R. S. c. 69, § 36; 81 Me. 558; 94 Me. 422.

The judge of probate, on the death of either of said adopters, may make a reasonable allowance to such child from the personal estate of the deceased, if the circumstances of the case demand it. R. S. c. 69, § 37.

Any judge of probate may, on petition of two or more persons, after notice and hearing, and for good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted under this chapter. R. S. c. 69, § 38.

If a person desires to have his name changed, he may petition the judge of probate in the county where he resides; or, if he is a minor, his legal custodian may petition in his behalf, and the judge, after due notice, may change the name of such person, and shall make and preserve a record thereof. R. S. c. 69, § 39.

(NOTE: Liability of guardian for injury by minor to school-house and school furnishings. R. S. c. 15, § 129. No trust or banking company shall act as guardian. R. S. c. 48, § 85. Minors may hold shares in loan and building associations. R. S. c. 48, § 57. Guardian may settle and give release of damages for land of ward taken by railroad corporation. R. S. c. 51, § 31. Care and custody of the person of minor children. R. S. c. 61, § 39. Compensation of guardian. R. S. c. 65, § 37. Guardians to pay stenographer's fees. R. S. c. 65, § 41.)

Legally adopted child is a lineal descendant. 84 Me. 483. May take a legacy given by will to one of his adopting parents, when legatee dies before the testator, and thus prevent the legacy from lapsing. *Ib.*

Upon application by the mayor and aldermen of any city, the selectmen of any town, or the president and a majority of the directors of any society for the protection of children, or prevention of cruelty to the same, the governor and council shall issue a badge and a commission to any suitable person designated in said application, authorizing such person to arrest persons charged

with violating any of the provisions of this act or any other act or law concerning the protection of children or prevention of cruelty to the same, in the same manner and with the same powers and jurisdiction in the premises as any sheriff, deputy sheriff, police officer or constable, and to perform such other duties as may be provided for by this act. P. L. 1905 c. 123, § 1.

Any officer or agent commissioned under the provisions of the preceding section and all sheriffs, deputy sheriffs, police officers and constables shall investigate all cases of cruel or injurious treatment of children coming to their knowledge, and shall cause offenders against any provisions of this act or any other act concerning the protection of children or prevention of cruelty to the same to be prosecuted. For their travel and services and expenses in conducting such investigations such officers and agents commissioned as aforesaid shall be paid reasonable compensation by the county in which such services are rendered and the same fees as are now allowed officers by law for the service of a warrant for arrest or any criminal process; *provided, however*, that all claims of such agents for such travel and services, expenses and fees shall first be audited and approved by the county commissioners of the county liable to pay the same. All fines imposed for the punishment of such offenses shall be paid over to the county treasurer of the county in which the offense may have been committed. P. L. 1905 c. 123, § 2.

Any officer or agent of any society for the protection of children or prevention of cruelty to the same may arrest and bring before any court or magistrate having jurisdiction, any person offending against any of the provisions of this act or any other act or law concerning the protection of children or the prevention of cruelty to the same. Such officer or agent, or any sheriff, deputy sheriff, police officer or constable, may lawfully interfere to prevent the perpetration in his presence of any such offense or act prohibited by this chapter or any other law concerning the protection of children or the prevention of cruelty to the same, and whoever interferes with or obstructs such officer or agent or any sheriff, deputy sheriff, police officer or constable in the discharge of his duty, is guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding six months. P. L. 1905 c. 123, § 3.

Any parent, guardian or other person, having the care and custody of any child, who cruelly treats such child by abuse,

neglect, over work or extreme punishment, shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding one year. R. S. c. 61, § 44.

When complaint in writing, signed by any such agent so appointed or any officer or agent of any society for the protection of children or the prevention of cruelty to the same, or by three or more citizens of any town or city is made under oath to the judge of any court or trial justice in the county in which said town or city is located, alleging that such child in said town or city is cruelly treated or willfully neglected by its parents or parent, or by the willful failure of such parents or parent is not provided with suitable food, clothing or the privileges of education, or is kept at or allowed to frequent any disorderly house, house of ill fame, gambling place or place where intoxicating liquors are sold, or other place injurious to health or morals, or that such child is an orphan without means of support or kindred of sufficient ability who will furnish such support, and praying that suitable and proper provision may be made for the care, custody, support and education of the child named in such complaint; the magistrate or judge to whom such complaint is made shall issue his warrant and cause such child to be brought before him, and notice to be given to its parents or parent, if any, for such length of time as the judge or magistrate may see fit, either by service in hand or publication in such manner as the judge or magistrate may direct, and the judge or magistrate may if he deems it necessary in his discretion continue the case for hearing, and if upon hearing it appears that the allegations of said complaint are true, and that it is suitable and proper that such child shall be supported and educated away from its parents or parent, he shall order it into the care and custody of such place or institution as is provided therefor by such town or city, or to such charitable institution or private person as he deems suitable, *provided* that such institution or person consents to receive, support and educate said child; but such order shall not extend beyond the time when such child arrives at the age of twenty-one years, if a male, or at the age of eighteen years if a female, and pending any such continuance of the case before hearing and after hearing and until such institution or person can be found, the magistrate or judge may in his discretion, if the circumstances appear to require it, order said child temporarily into the custody of any such agent so appointed, or of any such institution or suitable person consenting to receive said child, and the expense

of the support of said child during such period until permanent provision can be made therefor, in the manner above specified, shall be paid by the town in which said child resides, and said town may recover the amount thereof from the parents or parent of said child, if any, as provided in section fifty of this chapter. R. S. c. 61, § 45.

Upon petition of the superintendent of any such public or charitable institutions asking for the care and custody of any such child, an order to the same effect, as provided for in the preceding section may be made by the judge of the probate court in any county where either of the parents or the parent of such child resides, if written consent be given as provided in section thirty-three of chapter sixty-nine of the revised statutes. Such orders and decrees provided for in this and the preceding section shall have the same effect to divest the parents or parent of all legal rights in respect to such child as specified in section thirty-five of said chapter sixty-nine, and said institution shall have full custody and control over said child thereafter for said time, and have authority alone to give the consent required in said section thirty-three. R. S. c. 61, § 46.

Whenever the magistrate deems it suitable and conducive to the public welfare, that such child be placed under the control of a private person, he shall first take a bond from such person, running to the town where the child resides, in such sum and with such sureties as he approves, conditioned that such person shall humanely treat and properly support, clothe and educate the child, and in case of the non-performance of said bond, a suit may be commenced thereon, and the sum recovered upon such bond shall be paid into the treasury of the town to which the bond is given. Upon application to any magistrate, he shall examine into the condition and welfare of the children who have been provided for under this chapter, and may at any time make such further order in relation to their care, custody, support and education as justice demands. R. S. c. 61, § 47.

Whenever a child is in the custody of any public or charitable institution, the parents or either of them may make application in writing to any justice of the supreme judicial court to have its custody restored to them. Such notice of the application and the time and place of the hearing thereon as the court orders, shall be given to such institution and to the municipal officers of the town where the proceedings herein provided were commenced, and if, upon such hearing, it appears that the applicant is of sufficient ability and inclination suitably to provide

for its support and education, and that justice requires that its custody be restored to such applicant, the judge shall so order, and the custody and control of said child shall thereupon be given to such applicant until the further order of the court. R. S. c. 61, § 49.

Any town incurring expenses under the five preceding sections, through the fault of parents who are able properly to support and educate their children, but wrongfully neglect and refuse to do so, may recover of them, in an action of debt, the amount so expended. R. S. c. 61, § 50.

Any town may make proper provision for the support of children mentioned in the six preceding sections, and such support shall not make such children or their parents, paupers. R. S. c. 61, § 51.

CHAPTER XCV.

EMPLOYMENT OF CHILDREN.

No female minor under eighteen years of age, no male minor under sixteen years of age, and no woman shall be employed in laboring in any manufacturing or mechanical establishment in the state, more than ten hours in any one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purposes of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-eight in a week; and no male person sixteen years of age and over shall be so employed as above, more than ten hours a day during minority, unless he voluntarily contracts to do so with the consent of his parents, or one of them, if any, or guardian, and in such case he shall receive extra compensation for his services; *provided, however,* that any female of eighteen years of age or over, may lawfully contract for such labor for any number of hours in excess of ten hours a day, not exceeding six hours in any one week, or sixty hours in any one year, receiving additional compensation therefor; but during her minority, the consent of her parents, or

one of them, or guardian shall be first obtained. R. S. c. 40, § 48.

Every employer shall post in a conspicuous place in every room where such persons are employed, a notice printed in plain, large type, stating the number of hours' work required of them on each day of the week, the exact time for commencing work in the morning, stopping at noon for dinner, commencing after dinner, and stopping at night; the form of such printed notice shall be furnished by the inspector of factories, workshops, mines and quarries, and shall be approved by the attorney general. And the employment of any such person for a longer time in any day than that so stated, shall be deemed a violation of the preceding section, unless it appears that such employment is to make up for time lost on some previous day of the same week, in consequence of the stopping of machinery upon which such person was employed or dependant for employment. R. S. c. 40, § 49.

Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employment any person in violation of the provisions of section forty-eight, and every parent or guardian who permits any minor to be so employed, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for each offense. A certificate of the age of a minor made by him and by his parent or guardian at the time of his employment, shall be conclusive evidence of his age in behalf of the hirer, upon any prosecution for a violation of the provisions of section forty-eight. Whoever falsely makes and utters such a certificate with an intention to evade the provisions of this chapter relating to the employment of minors, shall be subject to a fine of one hundred dollars. R. S. c. 40, § 50.

Any person, firm or corporation engaged in any manufacturing or mechanical business, may contract with adult or minor employees to give one week's notice of intention on such employee's part, to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employee; and on failure, shall pay to such employee, a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employee is for a reasonable cause. *Provided, however,* that the enforcement of the penalty aforesaid, shall not prevent either party from recovering damages for a breach of the contract of hire. R. S. c. 40, § 51.

No child under fourteen years of age shall be employed or allowed to work in or in connection with any manufacturing or mechanical establishment. It shall be unlawful for any person, firm or corporation to employ for wages or hire any child under fourteen years of age in any manufacturing, mechanical, mercantile or other business establishment, or in any telephone or telegraph office, or in the delivery and transmission of telephone or telegraph messages during the hours that the public schools of the town or city in which he resides are in session. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employ any child in violation of the provisions of this section, and every parent or guardian who allows any child to be so employed, shall be punished by a fine not less than one dollar nor exceeding fifty dollars for each offense. R. S. c. 40, § 52.

No child over fourteen years of age and under sixteen years of age shall be employed or allowed to work in any manufacturing or mechanical establishment until he, or someone in his behalf, shall have produced and presented to the owner, superintendent, overseer or agent of such establishment, a certified copy of the town clerk's record of the birth of such child, or a certified copy of his baptismal record showing the date of his birth; or his passport showing the date of his birth; or an age and schooling certificate duly issued to him as hereinafter provided. No such child between his fourteenth and fifteenth birthdays shall be employed or allowed to work in any manufacturing, mechanical, mercantile or other business establishment, or in any telephone or telegraph office; or in the delivery and transmission of telephone or telegraph messages during the hours in which the public schools of the city or town in which he resides are in session, until he shall have produced and presented to the owner, superintendent, overseer or agent of such establishment an age and schooling certificate duly issued to him as hereinafter provided. No such child between his fifteenth and sixteenth birthdays shall be employed or allowed to work in any manufacturing or mechanical establishment during the hours in which the public schools of the city or town in which he resides are in session, until he shall have produced and presented to the owner, superintendent, overseer or agent of such establishment an age and schooling certificate duly issued to him as hereinafter provided. The employer shall keep on file such birth record, baptismal record, passport or age and schooling certificate in duplicate containing the name of such child, the name of his parents, guardian or

custodian, and such data as may be required by the inspector of factories, workshops, mines and quarries. Blank employment certificates, in form approved by the attorney general, shall be furnished by the inspector of factories, workshops, mines and quarries. One of such certificates shall be delivered to such child and the other be immediately forwarded to the office of said inspector of factories, workshops, mines, and quarries, to be kept on file by him. When such child leaves such employment, the employer shall return to such child the copy of the town record, baptismal record, passport or age and schooling certificate furnished by him as aforesaid, and shall immediately notify said inspector that such child has left his employ. The inspector of factories, workshops, mines and quarries, or any of his assistants, may demand of any employer or corporation the names of all children under sixteen years of age in his employ in the several cities and towns of the state, and may require that the birth record, baptismal record, passport or age and schooling certificate of such children shall be produced for his inspection, and the failure to produce the same shall be prima facie evidence that the employment of such child is illegal. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employment any child in violation of the provisions of this section, and every parent or guardian who allows any child to be so employed shall be punished by a fine of not less than one nor more than fifty dollars for each offense. R. S. c. 40, § 53.

Age and schooling certificates shall be issued by the superintendent of schools of the city or town in which the child resides, or some person designated and authorized in writing by the school committee, but no person shall issue such certificate to any minor then in or about to enter his employment, or the employment of a firm or corporation of which he is a member, stockholder, officer or employee. The person who issues the certificate in accordance with the provisions of this section is hereby empowered to administer the oath provided for therein, but no fee shall be charged therefor. R. S. c. 40, § 54.

An age and schooling certificate shall not be issued until the child applying therefor or some person in his behalf, shall furnish satisfactory evidence of the age of the child, which evidence shall be a certified copy of the town clerk's record of the birth of said child, or a certified copy of his baptismal record, showing the date of his birth or a passport showing the date of his birth, or other document satisfactory to the superintendent of schools or the person authorized to issue such age and schooling certifi-

cates; nor until such child has demonstrated his ability to read at sight and write simple sentences in the English language, and perform simple arithmetical problems involving the fundamental processes of addition, subtraction, multiplication and division, such educational test to be prepared and furnished by the superintendent of schools or the school committee of each city and town in the state; or has furnished a certificate to that effect signed by any teacher in any of the public schools of the city or town in which such child resides, or by the principal of any private school, or a certificate signed by the principal of any evening school in said city or town, to the effect that said child is a regular attendant of said evening school. R. S. c. 40, § 55.

The form of the age and schooling certificate provided for in section fifty-three of this act shall be prepared and furnished to the superintendent of schools or the school committee of the cities and towns by the attorney general, and shall be substantially as follows:

Form of Age and Schooling Certificate.

This certifies that I am the — [father, mother, guardian or custodian] of — [name of child], and that he [or she] was born at — [name of city or town], in the state [or county] of — on the — day of — in the year — and that at his [or her] last birthday he [or she] was — years old.
City or town and date.

——, Signature of Parents.

——, Guardian or Custodian.

Then personally appeared before me the above named — [name of person signing], and having produced for my inspection the — record [passport] of said child, made oath that the foregoing certificate by him [or her] signed is true to the best of his [or her] knowledge and belief.

Having no sufficient reason to doubt that he [or she] is of the age therein certified, I hereby approve the foregoing certificate of — [name of child]; whose signature, written in my presence, appears below; whose height is — feet and — inches; complexion is — [fair or dark]; hair is — color. I hereby certify that he [or she] has satisfactorily demonstrated his [or her] ability to read at sight and to write legible simple sentences in the English language, and to employ the fundamental principles of arithmetic, according to the test supplied by the local superintendent of public schools; that he [or she] has presented us a certificate to that effect signed by the principal a teacher of some public school in said town, or that he [or she] has presented a certificate signed by the principal of an evening school in said town to the effect that he [or she], said child is a regular attendant in said evening school.

This certificate belongs to — [name of child], and is to be surrendered

to him [*or her*] whenever he [*or she*] leaves the service of the employer holding the same, but if not claimed by said minor within thirty days from the time when he [*or she*] leaves such employment, it shall be returned to the superintendent of schools, or go to the person by whom it is issued.

Signature of child.

Signature of person authorized to issue and approve, with official character or authority.

City or town and date.

Whoever, being authorized to sign the foregoing age and schooling certificate, or whoever signing any certified copy of a town clerk's record of births, or certified copy of a child's baptismal record, shall knowingly certify to any false statement therein, and any parent or guardian who presents, or who permits or allows any child under his control to present, to any employer, owner, superintendent, overseer or agent as required under section fifty-three, any certified copy of birth or baptismal record, or passport, or age and schooling certificate containing any false statements as to the date of birth or age of such child, knowing them to be false, shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars for each offense. R. S. c. 40, § 56.

Nothing in the nine preceding sections shall apply to any manufacturing establishment or business, the materials and products of which are perishable and require immediate labor thereon, to prevent decay thereof or damage thereto. *Provided, however,* the employment of children therein shall be under the supervision of said inspector who shall on complaint investigate the sanitary conditions, hours of labor and other conditions detrimental to children, and if in his judgment he finds detrimental conditions to exist, he may in conjunction with the municipal officers of the town or city in which the complaint is made, prohibit the employment of children therein until such conditions are removed. R. S. c. 40, § 57.

CHAPTER XCVI.

MASTERS, APPRENTICES, AND SERVANTS.

In all cases where the care of the person, and the education of minors under fourteen years of age, have been intrusted to the parents, or to either of them, or to a legal guardian, under the provisions of section three of chapter sixty-nine of the revised statutes, such children may be bound as apprentices or servants, until that age, without their consent, by the parents or parent so intrusted, or by the guardian so intrusted with the approval of the judge of probate, and in all other cases such children may be bound as apprentices or servants, until that age, without their consent, by their father and mother, if living, if either has deceased, by the survivor, if both have deceased, by the legal guardian with the approval of the judge of probate as aforesaid, and if they have no parent or guardian, they may bind themselves with the approbation of the municipal officers of the town where they reside. The indenture shall, on the part of such parents or guardians, continue in force for the time mentioned in the following section, *provided*, that the children, on reaching the age of fourteen, give their consent, as provided in said section. R. S. c. 64, § 1.

Minors, above the age of fourteen, may be bound in the same manner, with their consent, which shall be distinctly expressed in the indenture signed by them; females to the age of eighteen, or to the time of their marriage within that age, and males to the age of twenty-one years. R. S. c. 64, § 2.

No minor of any age shall be thus bound, unless by an indenture of two parts, signed, sealed and delivered by both parties; and when the minor binds himself, by the consent of the municipal officers, such consent shall be in writing, signed by them on each part of the indenture. R. S. c. 64, § 3.

One part of the indenture shall be kept by the master or mistress, to whom the minor is bound, and the other part, by the parent or guardian for the use of the minor; and when made by

consent of the municipal officers as aforesaid, it shall be deposited with the town clerk. R. S. c. 64, § 4.

All considerations, allowed by the master or mistress in any contract of service or apprenticeship, shall be secured by the indenture, to the sole use of the minor; and paid to him without any control on the part of the parent or guardian at any time. R. S. c. 64, § 5.

All indentures made as aforesaid shall, in law, bind all parties thereto; but not the minors, parents or guardians, after the death of the master or mistress; nor shall such minors be transferred to another person, or carried out of the state. R. S. c. 64, § 6.

Parents and guardians, municipal officers, and masters and mistresses, joining in such indentures, have the like remedies and proceedings thereon as are provided for corresponding parties in chapter twenty-seven of revised statutes. R. S. c. 64, § 7.

CHAPTER XCVII.

FORTNIGHTLY PAYMENT OF WAGES.

Every manufacturing, mining, quarrying, stone cutting, mercantile, street railroad, telegraph, telephone and municipal corporation, and every incorporated express and water company, and any person or firm engaged in any of the above specified kinds of business, having in their employ more than ten persons, shall pay fortnightly each and every employee engaged in its business, except municipal officers whose services are paid for by the day, or teachers employed by municipal corporations, the wages earned by such employee to within eight days of the date of said payment, *provided, however*, that if at any time of payment, any employee shall be absent from his regular place of labor, he shall be entitled to said payment at any time thereafter on demand. R. S. c. 40, § 57.

Any corporation violating any provision of the preceding section shall be punished by a fine of not less than ten, nor more than twenty-five dollars on each complaint under which it is convicted, *provided*, that complaint for such violation is made within

thirty days from the date thereof. When a corporation against which a complaint is so made, fails to appear after being duly served with process, its default shall be recorded, the allegations in the complaint taken to be true, and judgment rendered accordingly. When judgment is rendered upon any such complaint against a corporation, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs and interest. R. S. c. 40, § 58.

CHAPTER XCVIII.

SELECTION AND SERVICE OF JURORS.

The municipal officers, treasurer, and clerk of each town and plantation, constitute a board for preparing lists of jurors to be laid before the town for their approval; and the town, in legal town meeting, by a majority of the voters assembled, may strike out such names as they think proper from such lists, but shall not insert any others. R. S. c. 108, § 1.

Such board, at least once in every three years, shall prepare a list of persons, under the age of seventy years, qualified to serve as jurors; and in preparing such list they shall take the names of such persons only as are of good moral character, of approved integrity, of sound judgment and well informed, and qualified as the constitution directs to vote for representatives in such town. When a new list is made, the municipal officers shall transfer from the old to the new tickets of the same persons, the minutes of the draft made within the three preceding years. R. S. c. 108, § 2.

The following persons are exempt from serving as jurors, and their names shall not be placed on the lists; the governor, councilors, judges and clerks of common law courts, secretary and treasurer of the state, all officers of the United States, judges and registers of probate, registers of deeds, settled ministers of the gospel, officers of colleges, preceptors of incorporated academies, physicians and surgeons, cashiers of incorporated banks, sheriffs and their deputies, coroners, counselors and attorneys-at-law, county commissioners, constables, all persons engaged in the

unlawful traffic in intoxicating liquors, or who are known to be habitually addicted to the use of intoxicating liquors as a beverage, and constant ferrymen. R. S. c. 108, § 3.

After the list of jurors is approved by the town, the board shall write their names upon tickets, and place them in the jury box, to be kept by the town clerk; and the persons whose names are in the box are liable to be drawn and to serve on any jury, at any court for which they are drawn, once in every three years and not oftener, except as herein provided. R. S. c. 108, § 4.

Each town shall provide, and constantly keep in the box, a number of names ready to be drawn when required, not less than one nor more than two for every hundred persons in the town, according to the census taken next before preparing the box; and the board shall withdraw from it the name of any person convicted of any scandalous crime, or guilty of any gross immorality. R. S. c. 108, § 5.

Within one year after every new census, and oftener if a considerable change of population renders it proper, the county commissioners shall divide their county into not less than four, nor more than twelve districts, numerically designated; and they shall place as many adjoining towns in each district, as will make the number of inhabitants in each, according to the last census, as nearly equal as may be, without dividing a town; and shall deliver a copy of such division immediately to the clerk of courts in their county. R. S. c. 108, § 6.

The grand and traverse jurors shall be drawn from each jury district in such manner as to cause jurors, at each term of court, to come from every part of the county as equally as may be, and so far as practicable, from every town in rotation, having regard to the number of its inhabitants, taking not more than two grand jurors and two traverse jurors from the same town at the same time, unless from necessity, or some extraordinary cause, or to equalize the service; and the clerk of courts shall issue venires to the constables of towns, and the constables, marshals or deputy marshals of cities accordingly. R. S. c. 108, § 7.

Venires for grand jurors to serve at the supreme judicial and superior courts, shall be issued at least forty days before the second Monday of September annually; and they shall serve at each term for the transaction of criminal business, during the year. Venires for traverse jurors, shall be seasonably issued before each term of the court, and at such other times, as the court orders. R. S. c. 108, § 8.

The sheriff on receiving such venire, shall immediately send them to the constables of the towns where directed, and to the constables, marshals or deputy marshals of cities and each constable, and the marshals or deputy marshals on receipt thereof, shall notify the voters of the town or city, and especially the municipal officers and town or city clerk, by posting notice in two public and conspicuous places therein, at least four days before such meeting, and by delivering to at least two of the municipal officers and the town or city clerk written notice of said meeting, to assemble and be present at the draft of jurors called for, which shall be six days at least before the time when they are ordered to attend court. R. S. c. 108, § 9.

Form of Venire and Return of Officer. [*The word town to be changed to city when necessary.*]

STATE OF MAINE.

_____, ss.

To either of the constables in the town of _____ in said county,

GREETING.

You are hereby required to notify, as the law directs, the voters of said town of _____ qualified to vote for representatives, and especially the municipal officers and _____ town clerk, to assemble at least six days before the _____ Tuesday of _____ next, and be present at the draft of _____ good and lawful persons of said town to serve as grand [*or traverse, as the case may be*] jurors at the _____ court for our county of _____, which is to be held at _____, within and for said county of _____ on that day.

And you are also required to notify the persons so drawn, at least four days before the sitting of said court, to attend the service aforesaid, on _____, the first day of the same, at ten o'clock in the morning, either by reading to _____ this venire, with the minute of _____ having been drafted, indorsed thereon, or by leaving at _____ usual place of abode, a written notification of _____ having been drawn as aforesaid, and also of the time and place of the sitting of the court, and when _____ to attend.

Hereof fail not, and make seasonable return of this writ, with your doings therein.

Witness, _____, esquire, at _____ aforesaid, the _____ day of _____, A. D. 19—. _____, Clerk.

[*For venire to officer of city add after constable the marshal or deputy marshal of the city of _____.*]

[*N. B. The officer is directed to return this venire into the clerk's office of the judicial courts, one day at least previous to the sitting of the court.*]

_____, ss.

Pursuant to the above venire, on the _____ day of _____, A. D. 19—, being at least four days before such meeting, I notified as the law directs the voters of said town of _____ qualified to vote for representatives, and especially

the municipal officers and clerk of said town [or city], by posting notices thereof in two public and conspicuous places in said town of —, to wit: one at —, in said town of —, and one at —, in said town of —, to assemble and be present at —, in said town of —, for the purposes therein expressed on the — day of —, A. D. 19—, at — o'clock in the — noon which was at least six days before the sitting of said court to which this venire was returnable, at which meeting, held at the time and place aforesaid, the following persons, viz.: — were drawn as the law directs to serve as grand [or traverse, as the case may be] jurors at the court therein mentioned.

And I have duly notified the said — that — drawn as grand [or traverse, as the case may be] jurors as aforesaid and of the time and place of the sitting of the court where — to attend.

Dated this — day of —, A. D. 19—.

—, { Constable of the Town of —.
[Or Constable, Marshal or Deputy
Marshal of the City of —.]

Fees for the service, \$1.50.

[Notice. The word town to be changed to city when necessary.]

Form of Notice of Meeting to Draw Jurors.

To the voters of the town of — qualified to vote for representatives, and especially to the municipal officers and town clerk of the town of —:

Agreeably to a venire to me directed, in the name of the State of Maine, you are hereby required to assemble at the — in said town, on —, the — day of —, A. D. 19—, at — o'clock in the — noon, that being at least six days before the first Tuesday of —, A. D. 19—, and be present at the draft of — good and lawful persons of said town to serve as grand [or traverse, as the case may be] juror at the — court for our county of —, which is to be holden at —, within and for said county of —, on the — Tuesday of —, A. D. 19—.

Dated at said —, this — day of —, A. D. 19—.

—, { Constable of the Town of —.
[Or Constable, Marshal or Deputy
Marshal of the City of —.]

Directions for drawing jurors, giving notices, making returns, etc.:

First. Use the blanks for notices of the meeting.

Second. Four days (exclusive of Sundays) must intervene between the day when the notices are posted, and the day when the meeting is held: it is therefore suggested, that the notice be posted on a *Monday* and the meeting for the draft of jurors be held on the following *Saturday*, and the meeting must be held at least *six* days before the sitting of the court.

Third. Notices of the meeting must state the hour of the day when the meeting will be held, and the hour should also appear in the officer's return.

Fourth. Observe carefully the blank spaces in the notices and return, and see that the proper words are inserted, describing accurately the public places where the notices are posted, and where the meeting is held, the number of jurors, and whether grand or traverse, and whether superior or supreme judicial court, as the venire may designate.

Fifth. Jurors must be notified at least *four* days before the sitting of the court that they have been drafted, and also of the time and place of the sitting of the court.

Sixth. In case of failure to make proper returns, the officer will be obliged to appear before the court and amend the same.

The venires must be returned to the clerk's office of the judicial court at least one day previous to the sitting of the court.

The town clerk, or, in his absence, one of the municipal officers, shall carry the jury box into the meeting, and it shall there be unlocked, and the tickets mixed by a majority of said officers present; and one of them shall draw out as many tickets as there are jurors required; and the persons whose names are drawn shall be returned as jurors, unless they have served on the jury within three years, or from sickness, or absence beyond sea, or without the limits, or in distant parts of the state, they are considered by the town unable to attend. R. S. c. 108, § 11.

In either of said cases, or if a person is drawn who has been appointed to an office exempting him from serving, others shall be drawn in their stead; but any person thus excused, or returned and attending court, and there excused, shall not be excused on another draft, although within three years; and when all the persons, whose names are in the box, have served within three years, or are not liable to serve, the selectmen shall draw out the required number of those who have not served for eighteen months; and the clerk shall certify on the venire, that all persons whose names are in the box have served within three years, or are not liable to serve. R. S. c. 108, § 12.

When a juror is drawn and not excused by the town, the municipal officers who drew his ticket shall indorse thereon the date of the draft and return it into the box. R. S. c. 108, § 13.

A constable of a town or the constables, marshals or deputy marshals of cities, shall notify the persons thus drawn four days at least before the sitting of the court, by reading the venire and indorsement thereon to them, or leaving at their usual place of abode a written notice that they have been drawn, and of the time and place of the sitting of the court where they must attend; and shall make a seasonable return of the venire with his doings thereon. R. S. c. 108, § 14.

Form of Notice.

To ———, of ———:

You are hereby notified that you have been drawn as a grand juror [*or a traverse juror, as the case may be*] from the town of ———; and you are to attend at the ——— court for the county of ———, on ———, at ——— o'clock in the ——— noon. Fail not, at your peril.

Dated, ———.

Constable of ———.

The grand and traverse jurors shall attend on the first day of the term for which they are drawn and summoned, unless the court designates a different day; and if so, the venire shall specify such day. R. S. c. 108, § 15.

If the municipal officers or town clerk neglect to perform their duties herein required, so that the jurors called for from their town are not returned, they shall be fined not less than ten, nor more than fifty dollars each. R. S. c. 108, § 16.

Any constable, neglecting to perform his duties herein required, shall be fined not exceeding twenty dollars; and any town, for a like neglect of its duties shall be fined not exceeding one hundred dollars. R. S. c. 108, § 17.

If the clerk of the court or sheriff, neglects to perform his duties so as to prevent a compliance with any of the provisions of this chapter, he shall be fined not exceeding fifty dollars. R. S. c. 108, § 18.

Any juror, who, after being notified and returned, unnecessarily fails in his attendance, shall be fined as for contempt, not exceeding twenty dollars. R. S. c. 108, § 19.

Any town clerk or municipal officer, who commits a fraud on the box previous to the draft, in drawing a juror or in returning a name, which had been fairly drawn into the box, and drawing another in its stead, or in any other mode, shall be fined not exceeding two hundred dollars, half to the state and half to the prosecutor. R. S. c. 108, § 20.

Court may exclude juror not legally disqualified. 80 Me. 413.

Person over seventy is qualified to act as juror but cannot be compelled to act. 79 Me. 120.

Objection to juror must be made before trial, if known. Knowledge of attorney is knowledge of his client. 81 Me. 158.

CHAPTER XCIX.

CORONERS AND CORONERS' INQUESTS.

Coroners shall hold inquests on dead bodies of such persons only as appear or are supposed to have come to their death by violence, and not when it is believed that their death was caused by casualty; and as soon as a coroner is notified of any such dead body in his county, he shall make out his warrant in the following form, directed to any of the constables of the same or an adjoining town in said county, requiring him forthwith to summon a jury of six good and lawful men of their towns to appear before him at the time and place fixed in the warrant. R. S. c. 140, § 1. For investigation of serious accident on steam and street railroad see "Railroads and Street Railroads".

[L. s.] To either of the constables in the town of ———, in the county of ———,

GREETING.

In the name of the State of Maine, you are hereby required immediately to summon six good and lawful men of said town of ———, to appear before me, one of the coroners of said county of ———, at the dwelling-house of ———, [*or at a place called ———,*] within said town at the hour of ——— in ———, then and there to inquire upon and view the body of ———, there lying dead, how and in what manner he came to his death. Fail not herein at your peril.

Given under my hand and seal at ———, the ——— day of ———, A. D. 19—.

S. F., ———.

The constable, to whom such warrant is directed and delivered, shall forthwith execute it, at the time appointed, repair to the place where the dead body is, and make return of the warrant with his doings to said coroner, or forfeit ten dollars; and every person summoned as a juror, neglecting to attend at the time

and place appointed, without reasonable excuse, forfeits seven dollars, to be recovered for the county in an action of debt in the name of the coroner or of the county. R. S. c. 140, § 2.

The coroner shall, in view of the body, administer to the jurors who appear the following oath :

You solemnly swear that you will diligently inquire and true presentment make on behalf of the state, how, when, and in what manner, the person whose body here lies dead came to his death, and you shall return to me a true inquest thereof according to your knowledge and the evidence laid before you. So help you God.

R. S. c. 140, § 3.

If the six jurors summoned do not appear as commanded, the coroner may require the constable or any other person whom he appoints, to return jurors from the bystanders to complete the number. R. S. c. 140, § 4.

The coroner may issue subpoenas for witnesses, to be served as in other cases, and shall administer to them an oath as follows :

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

R. S. c. 140, § 5.

Coroners, when holding inquests, have the same authority as probate courts, to compel the attendance of witnesses, and may commit for contempt. R. S. c. 140, § 6.

The evidence of all the witnesses shall be in writing and signed by them ; and if it relates to the trial of any person concerned in the death, the coroner shall bind such witnesses by recognizance, in a reasonable sum, for their personal appearance at the next supreme judicial or superior court to be held in the same county, to give their testimony accordingly ; and if they do not so recognize, he shall commit them to prison, and return to the same court the inquisition, written evidence and recognizance by him taken. R. S. c. 140, § 7.

After the coroner has sworn the jurors, he shall charge them to declare whether the person died by felony, mischance or accident ; if by felony, who were principals and accessories ; the instrument employed, and all important circumstances ; if by mischance, or by his own hand, in what manner, and all attending circumstances ; and shall make proclamation for all persons who can give any evidence to draw near and be sworn. R. S. c. 140, § 8.

The jury, after examining the body, hearing the evidence and making all useful inquiries, shall draw up and deliver to the coroner their verdict in writing under their hands and seals, in substance as follows:

An inquisition held at —, within the county of —, on the — day of —, A. D. 19—, before S. F., one of the coroners of said county, upon view of the body of —, there lying dead, by the oaths of —, —, good and lawful men, who, being charged and sworn to inquire for the state, when, how, and by what means said — came to his death, upon their oaths say: [*then insert how, when and by what means, and with what instrument he was killed.*] In testimony whereof, the said coroner and the jurors of the inquest have hereunto set their hands and seals, the day and year above said.

R. S. c. 140, § 9.

If any person, charged by the inquest with causing the death of such person, is not then in custody, the coroner shall have the same power as a trial justice to issue a warrant for his apprehension, to be returned before any judge or trial justice who shall proceed therein according to law. R. S. c. 140, § 10.

Every coroner within his county, after the return of an inquisition of the jury upon view of the dead body of a stranger, shall bury it in a decent manner; and all the expenses attending the burial and the expenses of the inquisition shall be paid out of the state treasury, if the coroner certifies under oath that the deceased was a stranger not belonging to the state, according to his best knowledge and belief; otherwise, the expenses of burial shall be paid to the coroner by the town where the body was found, and be repaid to such town by the town to which he belonged; and the expense of the inquisition, by the county. The word stranger shall be held to mean a person having no residence or place of abode in this state; but such word shall not apply to persons residing in the state and on whose account reimbursement might be had from the state by reason of his having no pauper settlement within the state. R. S. c. 140, § 11.

The coroner, if an inquest is held, shall be allowed three dollars a day for his services and attendance upon such inquest. The jurymen shall be allowed one dollar and fifty cents a day and travel at six cents a mile. The officer summoning jurors and witnesses shall receive fifty cents for summoning each, and six cents a mile travel for each juror and witness so summoned. In case no inquest is held the coroner shall be allowed three

dollars a day for his services and his reasonable and necessary charges for any materials furnished or labor performed. Such fees, services and expenses to jurors, witnesses and officers shall be paid directly to the parties to whom they are due, upon the coroner's certificate, supported by proper vouchers, that the amount is thus due. There shall be paid to the party giving the coroner notice that a dead body has been found, to the person who picked up said dead body, and to the person who has had the care of such body until taken care of by the coroner, a reasonable compensation for their services, but in no event to exceed two dollars for rendering either of the foregoing services. R. S. c. 140, § 12.

The evidence of all the witnesses taken at any inquest together with the record of the medical examiner shall, within ten days after the delivery of the verdict to the coroner, be filed by the coroner with the clerk of courts for the county in which said inquest is held and there remain open for public inspection. Coroners may employ a stenographer for the purpose of taking such evidence, who shall receive as compensation therefor the sum of six dollars a day, and ten cents a hundred words for transcript of notes, and six cents a mile for actual travel. P. L. 1909 c. 189, § 13.

The governor, with the advice and consent of the council, shall appoint for a term of four years, for each county in the state, one or more able and discreet men, learned in the science of medicine and anatomy, to be medical examiners in said county. P. L. 1909 c. 189, § 14.

All medical examiners shall be *bona fide* residents of the county for which they are appointed. P. L. 1909 c. 189, § 15.

Whenever a medical examiner is notified by the attorney general, county attorney for his county, or any coroner of his county that any person has come to his death by violence and that an autopsy is necessary, he shall immediately make a complete autopsy in the presence of the coroner who has the body in charge. The coroner and medical examiner, if they deem it necessary, may summon one local physician as an assistant and witness, who shall also act as clerk and make a full and complete record of all the facts and circumstances tending to show the condition of the body and all vital organs and the cause and manner of death, which record shall be signed by the medical examiner and the assistant and delivered to the coroner. P. L. 1909 c. 189, § 16.

The fees of said medical examiner shall be twenty-five dollars for the autopsy and actual travel and expenses. The fees of said assistant shall be ten dollars. P. L. 1909 c. 189, § 17.

Every coroner shall be appointed and hold his office, as provided in the constitution, and give bond to the treasurer of state, with sufficient sureties to the satisfaction of the county commissioners of his county, for the faithful discharge of his duties; such bond shall be transmitted to said treasurer, like a sheriff's bond; but when it is approved by the certificate of two county commissioners, and filed with the clerk of his county, he may discharge his duties until the first day of their next stated session, and not afterwards, unless his bond is then approved by them. R. S. c. 82, § 61.

All the provisions of sections three, four, seven, and fourteen to eighteen inclusive, of chapter eighty-two of the revised statutes relating to sheriff's bond apply to coroners as well as to sheriffs; and any coroner neglecting to give the new bond required by section four, thereby vacates his office. R. S. c. 82, § 62.

Every coroner shall serve and execute, within his county, all writs and precepts in which the sheriff thereof is a party, unless served by a constable, or while the office of sheriff therein is vacant, including those in which a town, plantation, parish, religious society or school district, of which he is at the time a member, is a party or interested; and may lawfully serve, execute and return any process in his hands when his term of office expires, or when he is notified of the qualification of the sheriff of his county after a vacancy. R. S. c. 82, § 63.

Coroners are entitled to the same fees as sheriffs for similar services, except where otherwise expressly provided. R. S. c. 117, § 6.

For attending court in every trial where the sheriff is concerned, twenty-five cents, and the same for attending the jury therein. Ib.

The fees for taking inquests on dead bodies are as follows, to be certified in the coroner's return, and paid out of the county treasury. R. S. c. 117, § 7.

To the coroner for granting a warrant and taking an inquest on one body, one dollar; if on more than one at the same time, whose death was caused by the same means, twenty cents for each body after the first, and ten cents a mile for travel from his residence to the place of inquest. Ib.

To the jurymen, seventy-five cents each, for each day's attendance, and four cents a mile for travel each way. Ib.

To the constable for his travel and attendance, and expenses in summoning a jury, ninety cents a day. Ib.

CHAPTER C.

CONSTABLES.

Constables are to be chosen at the annual town meetings in March. R. S. c. 4, § 14.

The duties and powers of a constable are various, some of which are as follows: He may be directed to warn town meetings, and, in the absence of the clerk, may preside for the choice of moderator. He may in certain cases act as collector of taxes, disperse unlawful assemblages, arrest temporarily suspicious persons, serve coroners' warrants, commit persons to the house of correction by order of the overseers of the poor, and do all other acts necessary to preserve the peace and protect property.

A constable may serve, execute and return, upon any person in his town, or in an adjoining plantation, any writ of forcible entry and detainer, or any precept in a personal action, when the damage claimed does not exceed one hundred dollars, including those in which a town, plantation, parish, religious society or school district, of which he is a member, is a party or interested; but before he serves any process, he shall give bond to the inhabitants of his town in the sum of five hundred dollars, with two sureties, approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office, as to all processes by him served or executed; and for every process that he serves before giving such bond, he forfeits not less than twenty, nor more than fifty dollars, to the prosecutor. R. S. c. 82, § 64.

Form of Constable's Bond.

Know all men by these presents, that we —, of —, in the county of —, as principal, and —, of said —, as sureties, are held and firmly

bound to the inhabitants of the town of —, in the sum of five hundred dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, by these presents.

Witness our hands and seals, this — day of —, 19—.

The condition of this obligation is such, that whereas said — has been chosen a constable for said town for the year —: now, if said — shall well and faithfully perform all the duties of his said office, as to all processes by him served or executed, then this obligation to be void; otherwise to remain in full force.

Signed, sealed, and delivered in presence of

A. B., } [Seal.]
C. D., } [Seal.]
E. F., } [Seal.]

Form of Indorsement of Approval.

This certifies that —, the sureties named in the within bond, are, in our opinion sufficient and they are hereby approved.

Dated, —.

G. H., }
J. K., } *Selectmen of* —.
L. M., }

Persons injured by the neglect or misdoings of a constable have the same remedy by preliminary action, and action on his bond, as in case of a sheriff's bond. R. S. c. 82, § 65.

Police officers, appointed in any city, have the powers of constables in all matters criminal, or relating to the by-laws of their city. R. S. c. 82, § 67.

The fees of constables for the service and return of each venire, one dollar and fifty cents, and for actual travel six cents a mile each way in posting and delivering the notices mentioned in section nine of chapter one hundred and seventeen of the revised statutes; and in notifying the juror or jurors drawn as provided in section fourteen of said chapter, to be paid out of the county treasury; and for services which may be performed either by a deputy sheriff or a constable, the constable is allowed the same fees as a deputy sheriff, unless otherwise provided. R. S. c. 117, § 8.

CHAPTER CI.

MARRIAGES, BIRTHS, DEATHS AND VITAL STATISTICS.

No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister; and no woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother. R. S. c. 61, § 1.

No insane person or idiot is capable of contracting marriage. R. S. c. 61, § 2.

Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void. R. S. c. 61, § 3.

Residents of the state intending to be joined in marriage shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted; and if one only of the parties resides in the state, they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such party resides, at least five days before such certificate is granted; and the book in which such record is made, shall be labeled on the outside of its cover, "Record of intentions of marriage," and be kept open to public inspection in the office of the clerk; and if there is no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town. Persons who are non-residents of the state, intending to be married in this state, shall have their intentions of marriage recorded in the office of the clerk of the town in which they propose to have the marriage solemnized, and the clerk may, upon request, issue his certificate on the same day in which he records the intentions of marriage of non-residents, but no person shall

marry any couple before he has received the certificate issued by the town or city clerk. R. S. c. 61, § 4.

The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; and it shall be delivered to the minister or magistrate before he begins to solemnize the marriage; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents or guardians first presented, if they have any living in the state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk; and for an intentional violation of the foregoing prohibitions; or for falsely stating the residence of either party named in such certificate, such clerk forfeits twenty dollars. R. S. c. 61, § 5.

All certificates of record of intentions of marriage, issued by the clerks of cities, towns or plantations, shall have conspicuously printed thereon the following words: "The laws of Maine provide for a fine not exceeding one thousand dollars or imprisonment not exceeding five years to be the punishment of any clergyman or other person, who shall solemnize a marriage within this state unless commissioned or authorized by the governor of Maine to solemnize marriages." P. L. 1907 c. 65, § 1.

Following the printing of the words required in section one said certificate shall contain the blank form for the return to the clerk of the city, town or plantation, which blank shall contain a space prepared for the entry of the date of the commission from the governor of Maine to the person solemnizing such marriage. P. L. 1907 c. 65, § 2.

Whoever contracts a marriage, or makes false representations to procure such certificate or the solemnization of marriage contrary to this chapter, forfeits one hundred dollars. R. S. c. 61, § 6.

When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall, on the blank prepared by the state registrar for that purpose, fill out and file a certificate of their marriage with the clerk of the town in which each of them lived, within seven days after their return. The clerk shall then record such marriage. Any person who fails to make the report of his marriage to the town clerk as is herein provided shall forfeit twenty dollars, half to the prosecutor, and half to the town where the forfeiture is incurred. R. S. c. 61, § 7.

Any person, believing that parties are about to contract marriage when either of them cannot lawfully do so, may file a caution and the reasons therefor, in the office of the clerk where notice of their intentions should be filed. Then if either party applies to enter such notice, the clerk shall withhold the certificate, until a decision is made by two justices of the peace, approving the marriage, after due notice to, and hearing all concerned; *provided*, that the person filing the caution, shall, within seven days thereafter, procure the decision of such justices, unless they certify that further time is necessary for the purpose. In which case a certificate shall be withheld until the expiration of the certified time. He shall, finally, deliver or withhold the certificate in accordance with the final decision of said justices. If the decision is against the sufficiency, the justices shall enter judgment against the applicant for costs, and issue execution therefor. R. S. c. 61, § 8; 88 Me. 252.

When residents of this state, with intent to evade the provisions of sections one, two and three of this chapter, or of chapter sixty-two of the revised statutes, and to return and reside here, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, such marriage is void in this state. R. S. c. 61, § 9.

Marriages solemnized among Quakers or Friends, in the form heretofore practiced in their meeting, are valid, and not affected by the foregoing provisions; and the clerk or the keeper of the records of the meeting in which they are solemnized, shall make return thereof, as hereinafter provided. R. S. c. 61, § 10.

Every justice of the peace or notary public residing in this state may solemnize marriages therein. Every ordained minister of the gospel, clergyman engaged in the service of the religious body to which he belongs, or person licensed to preach by an association of ministers, religious seminary or ecclesiastical body, whether a resident or non-resident of this state, and of either sex, may solemnize marriages therein after being licensed for that purpose, upon application duly filed with the secretary of state, as herein provided. Such application shall be made upon blanks furnished by the secretary of state which shall be signed by the applicant and set forth the necessary facts in the premises, which facts shall be certified to by the clerk, treasurer, or any of the municipal officers of the town wherein the applicant resides, or wherein the ceremony is to be performed. Upon receipt of such application the secretary of state shall issue to the applicant a

license under the seal of the state to the effect that he is authorized to solemnize marriages in this state. Such license, or a certified copy thereof shall be received as evidence in all courts of his authority in the premises, and a copy of the record of any marriage solemnized by such licensee duly made and kept, attested or sworn to by the clerk of the town in which the marriage intention was recorded or in which the marriage was solemnized shall be received in all courts as evidence of the fact of marriage. Such license shall continue until revoked by the governor for cause, after notice and an opportunity to be heard thereon. P. L. 1909 c. 161, § 1.

Whoever knowingly and willingly joins persons in marriage contrary to this chapter, forfeits one hundred dollars, two-thirds thereof to the county where the offense is committed, and one-third to the prosecutor, to be recovered by the county treasurer, or by the parent, guardian, or other person under whose immediate care and government either of the parties was at the time of such marriage; and such offender is forbidden to join any persons in marriage thereafter. P. L. 1909, c. 161, § 13.

If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any persons in marriage, he shall be confined to hard labor in the state prison for not more than five years, or fined not exceeding one thousand dollars. R. S. c. 61, § 14.

A copy of a record so made and kept, attested or sworn to by a justice of the peace, commissioned minister, or town clerk, shall be received in all courts as evidence of the fact of marriage. R. S. c. 61, § 15.

No marriage, solemnized before any known inhabitant of the state professing to be a justice of the peace, or an ordained or licensed minister of the gospel duly appointed and commissioned, is void, nor is its validity affected by any want of jurisdiction or authority in the justice or minister, or by any omission or informality in entering the intention of marriage, if the marriage is in other respects lawful, and consummated with a full belief, on the part of either of the persons married, that they are lawfully married. R. S. c. 61, § 16.

A town clerk who makes out and delivers to any person a false certificate of the entry of the intention of marriage, knowing it to be false in any particular, shall be fined one hundred dollars or imprisoned six months. R. S. c. 61, § 17.

The secretary of the state board of health shall be the registrar of vital statistics for the state, and shall furnish to clergymen, and others authorized to marry, to sextons, to physicians, town clerks, clerks of the society of Friends, and clerks of courts, a copy of the provisions of this chapter relating to the registration of vital statistics, and suitable blanks for recording births, marriages, deaths and divorces, so printed, with appropriate headings, as readily to show the following facts and such others as may be deemed necessary to secure an accurate registration.

First. The record of birth shall state its date and place of occurrence, full Christian and surname, if named, color and sex of child, whether living or stillborn, and the full Christian and surnames, color, occupation, residence and birthplace of parents.

Second. The record of marriage shall state its date and place of occurrence, the name, residence, and official character of the person by whom solemnized, the full Christian and surnames of the parties, the age, color, birthplace, occupation and residence of each, the condition, whether single or widowed, whether first, second or other marriage; and the full Christian and surnames, residence, color, occupation and birthplace of their parents.

Third. The record of death shall state its date, the full Christian and surname of the deceased, the sex, color, condition, whether single or married, age, occupation, place of birth, place of death, the full Christian and surnames and birthplaces of parents, and the disease or other cause of death, so far as known. R. S. c. 61, § 18.

The attending physician, accoucheur, midwife or other person in charge, who shall attend at the birth of any child, living or stillborn, within the limits of any town or city in this state, shall report to the clerk of such town or city within six days thereafter, all the facts regarding such birth, as required in section eighteen. R. S. c. 61, § 19.

Every person authorized to unite persons in marriage shall make a record of every marriage solemnized before him, in conformity with the requisitions prescribed for blank records of marriages in section eighteen, and shall within six days thereafter, deliver or forward to the clerk of each town in which the marriage intention was recorded, and to the clerk of the town in which the marriage was solemnized, a copy of such record of marriage. R. S. c. 61, § 20.

A physician who has attended a person during his last illness shall within twenty-four hours after the death of said person

make a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death, and shall either deliver it to the person superintending the burial or leave it with the family of the deceased or at the said physician's office where it may be obtained when called for; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a stillborn child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief the fact that such child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death. R. S. c. 61, § 21.

Whenever any person shall die, or any stillborn child be brought forth in this state, the undertaker, town clerk or other person superintending the burial of said deceased person, shall obtain from the physician attending such bringing forth or last sickness, a certificate, duly signed, setting forth as far as may be, the facts required by section twenty-one; and the undertaker or other person having charge of the burial of said deceased person, shall add to said certificate the other facts required by section eighteen; and having duly signed the same, shall forward it to the clerk of the town or city where said person died and obtain a permit for burial; and in case of any contagious or infectious disease, said certificate shall be made and forwarded immediately. R. S. c. 61, § 22.

In case of any deceased person not having had the attendance of a physician in his or her last sickness, the town clerk may issue and sign the certificate of death, upon presentation of such facts as may be obtained of relatives, persons in attendance upon said deceased person during said last sickness or present at the time of death, or from any other source, and the permit for burial shall be issued upon such information. Said certificate and permit shall not be required before burial in cases where it is impracticable to obtain the same within a reasonable time after death, but in all such cases said certificate shall be obtained as soon as practicable after death. R. S. c. 61, § 23.

No body of a deceased person whose death was caused by cholera, yellow fever, diphtheria, scarlet fever, typhus fever, typhoid fever, small-pox or other pestilential disease, shall be removed from place to place in this state by any railroad, steamboat or other common carrier, unless there shall be attached to the outer case in which said body is enclosed, a certificate from

the board of health where such person died, stating the disease causing such death, and that necessary precautions against infection satisfactory to said board have been observed. A certificate of death giving heart failure as the only cause of death shall not be deemed sufficient upon which to issue a burial permit, and such certificate must be returned to the physician who made it for the proper correction and definition. If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit, then the person or persons in charge of it shall apply for a burial permit to the clerk of the town in which it is to be buried, and the clerk of the town shall issue such permit when furnished with satisfactory information. R. S. c. 61, § 24.

Within six days following such events, parents shall report to the clerk of their city or town the births or deaths of their children; householders shall report every birth or death happening in their houses; the eldest person, next of kin, shall report the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, almshouse, or other institution, and the master or other commanding officer of a ship, shall report every birth or death happening among the persons under his charge; and parents and other persons enumerated in this section shall not be absolved from the duty of reporting births until the names of the children have been given to the clerk of the city or town in which the births occur. R. S. c. 61, § 25.

When a birth, marriage or death occurs in an unincorporated place, it shall be reported to the town clerk in the town which is nearest to the place at which the birth, marriage or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the state registrar as is provided herein. R. S. c. 61, § 26.

The clerk of each town shall, on the first Monday of each month, make a certified copy of the record of all deaths and births recorded in the books of said town during the previous month, whenever the deceased person, or the parents of the child born were resident in any other town in this state at the time of said death or birth, or whenever they were recently resident in any other town, or whenever the remains of any deceased person

have been carried to any other town for burial and shall transmit said certified copies to the clerk of the town in which said deceased person or parents were resident at or near the time of said birth or death, or to which the remains of such deceased person have been carried for burial, stating in addition the name of the street and the number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained; and the clerk so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the registrar of vital statistics. R. S. c. 61, § 27.

Except as provided in section twenty-three, no interment or disinterment of the dead body of any human being, or disposition thereof in any tomb, vault or cemetery, shall be made without a permit as aforesaid, from the clerk of the town or city where said person died, or in case of disinterment, is buried, nor otherwise than in accordance with such permit. No undertaker or other person shall assist in, assent to or allow any such interment or disinterment to be made, except as provided in section twenty-three, until such permit has been given as aforesaid; and every undertaker or other person having charge of any burial place as aforesaid, who shall receive such permit, shall preserve and return the same to the clerk of the town in which the death occurred within six days after the day of burial. R. S. c. 61, § 28.

The town or city clerk may appoint two suitable and proper persons, in each town or city, as sub-registrars, who shall be authorized to issue burial permits based upon a death certificate, as hereinbefore provided, in the same manner as is required of the town or city clerk; and the said death certificate upon which the permit is issued shall be forwarded to the town clerk within six days after receiving the same, and all permits by whomsoever issued shall be returned to the town clerk as required by section twenty-eight. The appointment of sub-registrars shall be made with reference to locality, so to best suit the convenience of the inhabitants of the town, and such appointment shall be in writing and recorded in the office of the town or city clerk, and the sub-registrars in any town shall hold office at the pleasure of the town clerk. R. S. c. 61, § 29.

Town clerks and sub-registrars may issue burial permits to persons in contiguous towns, when by so doing it would be more convenient for those seeking a permit, but in all cases the permit

shall be made returnable to the town clerk of the town in which the death occurred. R. S. c. 61, § 30.

The assessors shall, when taking the annual inventory, collect and return to the town clerk, before the first day of June, the births which have occurred within their respective jurisdictions during the year ending December thirty-first next preceding, together with the names of such children. R. S. c. 61, § 31.

The clerk of every town shall keep a chronological record of all births, marriages and deaths reported to him, or known to him, and shall, between the tenth and the fifteenth of May, nineteen hundred and seven, send to the state registrar a copy of the record of all births, marriages, and deaths occurring during the four preceding months of that year, and thereafter shall, between the tenth and the fifteenth of every succeeding month, transmit to the state registrar a copy of the record of all births, marriages and deaths which have occurred within the month next preceding, together with the names, residences, and official stations of all persons who have neglected to make returns to him in relation to the subject matters of such records, which the law required them to make, all to be made upon blanks to be prepared and furnished by the state registrar; and if no births, marriages, or deaths have occurred in the aforementioned period of time or month, for which returns are to be made, the town clerk shall send the state registrar a statement to that effect. Whenever a birth, marriage, or death, required by law to be returned to such clerk, is reported to him, or he learns of it, too late for inclusion in his returns as provided hereunder to the state registrar, he shall, after it is reported to him, or after he has knowledge of it, make due returns thereof to the state registrar forthwith. R. S. c. 61, § 32.

The clerks of courts for the several counties shall, annually, during the month of February, make returns to the registrar of vital statistics relating to libels for divorce in their respective counties for the calendar year next preceding. Such returns shall specify the following details; the number of divorces granted; and the names of the parties including the maiden name and any other former name of female, if any, when ascertainable. R. S. c. 61, § 33.

The state registrar shall cause the returns made to him in pursuance of the two preceding sections to be arranged alphabetically for convenient reference, and carefully preserved in his office. He shall annually make and publish a general abstract and report

of the returns of the preceding year in such form as will render them of practical utility, not more than two thousand five hundred copies of which shall be printed and bound in cloth, one copy of which shall be forwarded to every town, one copy to each senator and representative, one copy to each state and territory in the union, and the remainder to such departments, libraries and persons as the state registrar shall direct. R. S. c. 61, § 34.

The sum of three thousand dollars a year, is hereby appropriated for printing and binding the circulars and blanks, for postage and expressage, and to defray the expenses of clerical work and the necessary traveling expenses of the state registrar in carrying out the provisions of this chapter relating to the registration of vital statistics. R. S. c. 61, § 35.

The town clerk's record of any birth, marriage or death, or a duly certified copy thereof, shall be prima facie evidence of such birth, marriage or death, in any judicial proceeding. R. S. c. 61, § 36.

Clerks of cities shall transmit to the board of registration list of male persons over twenty-one years of age deceased since the preceding election. R. S. c. 5, § 26.

If any person shall willfully neglect or refuse to perform any duty imposed upon him by the provisions of section ten or of the nineteen last preceding sections, it shall be a misdemeanor, and he shall be fined not more than one hundred dollars for each offense, for the use of the town in which the offense occurred, and the state registrar shall enforce this section as far as comes within his power; when the state registrar knows, or has good reason to believe, that any penalty or forfeiture hereunder has been incurred, he shall forthwith give notice thereof, in writing to the county attorney of the county in which said penalty or forfeiture has occurred, which notice shall state as near as may be, the time of such neglect, the name of the person or persons incurring the penalty or forfeiture, and such other facts relating to the default of duty as said state registrar may have been able to learn, and upon receipt of such notice the county attorney shall prosecute the defaulting person or persons. R. S. c. 61, § 37.

The clerk of each city or town shall enforce, so far as comes within his power, sections ten, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-eight and thirty-one of this chapter, and when he knows of any birth, marriage or death, which is not reported to his office in accordance with the provisions of

this chapter, he shall collect so far as he is able to do so, the facts called for in the blank certificates of birth, of marriage, or of death, as furnished by the state registrar, and shall record them as is herein prescribed; for each birth or death duly reported to the town clerk, physicians shall receive twenty-five cents from the town in which the birth or death has occurred. R. S. c. 61, § 38.

When the state registrar of vital statistics believes that, in any place in this state, the records of births, marriages, or deaths are not made as is provided by law, or that any person neglects or fails to perform any duty provided in the law relating to the registration of vital statistics, the said registrar may visit such places and make such investigations as he may deem necessary, and all records, blanks and papers of town clerks relating to births, marriages or death shall be open to his examination, and any person who refuses such examination or hinders such investigation shall be guilty of a misdemeanor and shall be fined not less than five nor more than twenty dollars. All actual traveling and other necessary expenses thus incurred by the state registrar, or incurred in attending the prosecution of cases brought by county attorneys, under the provision of section thirty-seven of this chapter, shall be paid by the state from the appropriation provided in section thirty-five, but not more than two hundred dollars shall thus be paid to the state registrar for such expenses in one year. P. L. 1909 c. 75, § 8.

When a town or city clerk receives a certificate of the death of any person who has died of tuberculosis in his town, he shall forthwith send a copy of said certificate to the health officer of his town or city, or where there is no health officer, to the secretary of the local board of health. P. L. 1909 c. 75, § 9.

The registrar of vital statistics shall require all copies which are transmitted under the provisions of section thirty-two of chapter sixty-one to be typewritten or written with black durable ink in a fair or legible hand, and a city or town clerk who neglects or refuses to make or cause to be made typewritten or fair and legible copies as required shall forfeit not less than twenty nor more than one hundred dollars, to the use of the state. P. L. 1909 c. 75, § 10.

No particular form of marriage is necessary. The following may be used:

You, A. B. and C. D., having entered into an agreement to become husband and wife, and having produced to me a certificate according to law, will now please join your hands.

Do you (addressing the man) take this woman to be your lawful wife, promising to love, honor, cherish and protect her and in all respects to be a faithful husband to her, so long as you both shall live?

Answer, I do.

Do you (addressing the woman) take this man to be your lawful husband, promising to love, honor and cherish him, and in all respects to be a faithful wife to him, so long as you both shall live?

Answer, I do.

I now pronounce you husband and wife, married according to the laws of the state. Those whom God hath joined together, let no man put asunder

The form of a certificate of marriage may be as follows:

To all whom it may concern:

This is to certify, that A. B. and C. D., both of E., in the county of F. and State of Maine, were joined in marriage, at E., on the — day of — A. D. 19—.

By me,

G. H., *Justice of the Peace.*

CHAPTER CII.

REFERENCE OF DISPUTES BY CONSENT OF PARTIES.

All controversies which may be the subject of a personal action, may be submitted to one or more referees, with the same powers as those appointed by the court; and the parties personally, or by attorney, may sign and acknowledge an agreement before a justice of the peace, although he is one of the referees, in substance as follows:

Know all men by these presents, that —, of —, in the county of —, and —, of —, in the county of —, have agreed to submit the demand made by said —, against said —, which is hereunto annexed [*and all other demands between the parties, as the case may be*], to the determination of —; and judgment rendered on their report, or that of a majority of them, made to the supreme judicial [*or superior*] court for the said county of —, within one year from this day, shall be final. And if either party neglects to appear before the referees, after proper notice given to him of the time and place appointed for hearing the parties, they may proceed in his absence.

Dated this — day of —, in the year —.

Such agreement shall not be revoked without mutual consent; but the parties may agree when the report shall be made, and vary the form accordingly. R. S. c. 110, § 1.

If all demands between the parties are so submitted, no specific demand need be annexed to the agreement; but if a specific demand only is submitted, it shall be annexed to the agreement and signed by the party making it, and be so stated as to be readily understood. R. S. c. 110, § 2.

All the referees must meet and hear the parties; but a majority may make the report, which shall be as valid as if signed by all, if it appears by the report, or certificate of the dissenting referee that all attended and heard the parties. They may allow costs or not to either party unless special provision is made therefor in the submission, but the court may reduce their compensation; and any referee may swear witnesses. R. S. c. 110, § 3.

The report shall be made to the court and within the time specified in the submission; one of the referees shall deliver it into court, or it shall be sealed up and sent sealed to the court, and be opened by the clerk. R. S. c. 110, § 4.

The court may accept, reject, or recommit the report, and either party may file exceptions thereto; if recommitted, the referees shall notify the parties of the time and place for a new hearing; when the report is accepted, judgment shall be entered thereon as in case of submissions by rule of court; and either party may bring a writ of error to reverse such judgment. R. S. c. 110, § 5.

Reference may also be made at common law and by rule of court. A reference at common law may be readily drawn up by consulting the form for a statutory reference given in section one, the proper changes being made. The provision relating to return of the report to a court should be omitted, and other provisions added as the case may require.

CHAPTER CIII.

FEES OF TRIAL JUSTICES AND JUSTICES OF THE PEACE.

The fees of trial justices and justices of the peace shall be as follows :

For every blank writ of attachment and summons thereon, or original summons, ten cents.

For every subpoena for one or more witnesses, ten cents.

Entry of an action, or filing a complaint in civil causes, including filing of papers, swearing of witnesses, examination, allowing and taxing the bill of costs, and entering and recording judgment, thirty cents. Each continuance in a civil action, five cents.

Trial of an issue in a civil action, eighty cents, and when more than one day is used in the trial, two dollars for each day after the first, actually employed.

Copy of a record or other paper, at the rate of twelve cents a page.

Writ of execution, fifteen cents.

For a recognizance to prosecute an appeal, including principal and surety, twenty cents.

Taking a deposition, affidavit or disclosure of a trustee, in any cause not pending before himself, twenty cents; for writing the same with the caption, and for the notification to the parties and witnesses, at the rate of twelve cents a page; the justice who takes such affidavit, deposition or disclosure, shall certify the fees of himself, of the witnesses, or party disclosing, and of the officers serving the notifications.

Taking a deposition in perpetual memory of the thing, the same fees as in taking other depositions.

Administering an oath in all cases, except on a trial or examination before himself, and to qualify town and parish officers, and a certificate thereof, twenty-five cents, whether administered to one or more persons at the same time.

Taking the acknowledgment of a deed with one or more seals, if it is done at the same time, and certifying the same, twenty-five cents.

Granting a warrant of appraisal in any case, and swearing appraisers, fifty cents.

Receiving a complaint, and issuing a warrant in criminal cases, fifty cents.

Entering a complaint in a criminal prosecution, swearing witnesses, rendering and recording judgment, examining, allowing and taxing the costs, and filing the papers, seventy-five cents.

Trial of an issue in a criminal case, eighty cents; and when more than one day is used in the trial, two dollars for each day after the first, actually employed.

Recognized persons charged with crimes for their appearance at the supreme judicial or superior courts, and for certifying and returning the same, with or without sureties, twenty-five cents.

Mittimus for the commitment of any person on a criminal accusation, twenty-five cents.

In a bastardy process, the fees may be charged as for like services in a criminal prosecution.

Drawing a rule for submission to referees, and acknowledging the same, thirty-three cents.

Writ to remove a nuisance, thirty-three cents.

Calling a meeting of a corporation, fifty cents.

For an examination of a debtor under chapter one hundred and fourteen, two dollars for each day employed in such examination, in full payment for all official services and expenses in such examination, exclusive of travel. For travel on official duty, twelve cents a mile one way, but one to be taxed for over ten miles one way and in no case shall there be constructive travel.

In all cases where the attendance of two or more justices is required, each is entitled to the fees prescribed for all services rendered by him personally. R. S. c. 136, § 2.

CHAPTER CIV.

INSPECTION OF LIME AND LIME CASKS.

The governor, with the advice and consent of the council shall appoint in each town where lime is manufactured, one resident citizen thereof to be inspector of lime casks therein for four years and until his successor is appointed and qualified unless sooner removed. He shall give bond, with sufficient sureties, for the faithful performance of his duties before entering thereon, to the treasurer of his county, in the following sums: the inspector of Rockland, five thousand dollars; of Thomaston and Rockport, three thousand dollars each; and of every other town, two thousand dollars each, to be approved by the county commissioners; and each lime manufacturer shall designate to the inspector one or more persons to act as deputy inspector of lime casks used by him, from which number the inspector shall appoint as many deputies as are necessary, who shall give bond to the treasurer of the county in like manner as their principal in the sum of one thousand dollars. Such deputy shall have sole inspection of lime casks on the premises of the manufacturer by whom he is designated. R. S. c. 40, § 2.

Lime casks shall be made of sound and seasoned sawed timber in a workmanlike manner and kiln dried or well fired on the inside, with staves not less than twenty-nine inches in length and three-eighths of an inch thick on the thinnest edge; heads not less than five-eighths of an inch thick and fifteen and one-half inches in diameter when dry and well crozed in; good and strong hoops of oak, ash, beech, birch, maple, cherry or elm wood, not less than one inch wide in the narrowest part and not less than eight in number, except when two or more hoops of uniform shape throughout not less than one and one-fourth inches wide are used, the whole number may be reduced to six, or instead of such hoops, hoops of metal may be used, and where all the hoops are of metal the number may be reduced to four; each cask shall be not less than twenty-five inches in length between the heads, fifteen and one-fourth inches in width between the chimes and

seventeen inches in the clear on the inside at the bilge. No lime casks or barrels to contain lime shall be manufactured and no lime shall be put up for sale in casks or barrels of less size than herein provided, or not made in accordance with this section. R. S. c. 40, § 3.

All packages containing lime shall have conspicuously on the outside thereof in distinct and plain letters the full name, or initials of the Christian name and full surname of the manufacturer followed by the letters "Man'r," with the name of the place or particular locality where manufactured. Nowhere, on any such package shall appear the name, an abbreviation of the name, or any imitation of any name or abbreviation of the name of any city or town, other than that in which the lime contained in such package is manufactured. R. S. c. 40, § 4.

Every manufacturer of lime shall make on the first day of January of each year, to the inspector of lime casks in the town where the lime is manufactured, a return, showing the whole amount of lime manufactured by him, the amount put up in packages, and the kind, number and size of such packages and the amount sold or shipped in bulk. R. S. c. 40, § 5.

The inspectors and their deputies shall inspect all lime casks and see that in all respects the provisions of this section and four preceding sections are complied with, and for the purpose of performing such duties they may stop and inspect casks in transit or offered for sale. They shall be responsible to any person injured by their misconduct, or their failure to perform their official duty, and when judgment is recovered against the inspector or deputy on account of any misdoings in his office and the execution is returned unsatisfied, the creditor may avail himself of the benefit of the inspector's or deputy's bond, a copy of which shall be given him on request, by like proceedings as a party injured by the misdoing of a sheriff may avail himself of the bond of such sheriff. R. S. c. 40, § 6.

Whoever violates any provision of the five preceding sections shall be punished by fine not exceeding fifty dollars for each offense. R. S. c. 40, § 7.

CHAPTER CV.

INSPECTION OF LEATHER, BOOTS, AND SHOES.

Every manufacturer of leather, and of boots and shoes, of any description, has the exclusive right of stamping them with the initials of his Christian name, and the whole of his surname; and such stamping is a warranty that the article is merchantable, and well made of good materials; and if any person fraudulently stamps any such articles with the name or stamp of any other person, he shall be fined not exceeding twenty dollars, or imprisoned not exceeding six months. R. S. c. 40, § 17.

The municipal officers of each town, when they deem it expedient, may appoint one or more suitable inspectors of sole leather, and receive such fees from their employer, as said officers establish; and when paid by the seller, to be repaid to him by the buyer; when requested, they shall go to any place in their town to inspect any sides of sole leather, which have not been inspected according to law in this state. R. S. c. 40, § 15.

Each inspector shall provide himself with a proper apparatus, with which he shall weigh and stamp every side of sole leather inspected by him, with the weight thereof, his surname, and the name of his town; and on all sole leather made of good hides, and in the best manner, the word "best," shall be stamped; on all made of such hides in a merchantable manner, the word "good"; and on all other, the words "second quality," "third quality," "damaged," or "bad," according to the fact; and whoever counterfeits, alters or defaces such mark, forfeits twenty dollars for each offense, half to the town and half to the prosecutor. R. S. c. 40, § 16.

CHAPTER CVI.

SURVEY OF WOOD, BARK, COAL, HOOPS, STAVES
AND LUMBER.

Towns may, by ordinance, regulate the measure and sale of wood, coal and bark therein, and the location of teams hauling the same; and may enforce it by reasonable penalties. All cord wood exposed for sale shall be four feet long including half the scarf, and well and closely laid together; a cord of wood or bark shall measure eight feet in length, four feet in width, and four feet in height, or otherwise contain one hundred and twenty-eight cubic feet; and the measurer shall make due allowance for refuse or defective wood, and bad stowage. R. S. c. 42, § 1.

If any firewood or bark, brought into any town by land, is sold and delivered, unless otherwise agreed to by the purchaser, before it is measured by a sworn measurer, and a ticket signed by him and given to the driver, stating the quantity that the load contains, the name of the driver, and the town in which he resides, such wood or bark is forfeited and may be libeled and disposed of according to law. R. S. c. 42, § 2.

All cord wood, brought by water into any town for sale, shall be corded on the wharf or land, on which it is landed, in ranges making up in height what is wanting in length; then it shall be so measured and a ticket given to the purchaser, who shall pay the stated fees; and no such wood shall be carried away by any wharfinger or carter, before it has been so measured, under a penalty of one dollar for every load. R. S. c. 42, § 3.

Persons, carrying firewood from a wharf or landing for sale, shall be furnished by the owner or seller with a ticket stating the quantity, and the name of the driver; and if such firewood is carried away without such ticket, or any driver refuses to exhibit such ticket to any sworn measurer on demand, or does not consent to have the same measured, when in the opinion of the measurer the ticket certifies a greater quantity of wood than the load contains, such wood shall be forfeited, and may be seized and libeled by said measurer according to law. R. S. c. 42, § 4.

When any wood, bark or charcoal sold by the cord, foot or load, is so stowed as to prevent the surveyors from examining the middle of the load, and it appears on delivery that it was stowed with a fraudulent intent of obtaining payment for a greater quantity than there was in fact, the seller or owner thereof forfeits ten dollars to the county. R. S. c. 42, § 5.

Charcoal brought into a town for sale, may be measured and sold by the cord or foot, estimating the cord at ninety-six bushels, when the purchaser and seller agree to the same; and the measurers before named shall be measurers of charcoal also. R. S. c. 42, § 6.

All baskets for measuring charcoal brought into a town for sale, shall be sealed by the sealer of the town where the person using them usually resides, and shall contain two bushels and be of the following dimensions, viz.: nineteen inches in breadth in every part and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and in measuring charcoal for sale, the basket shall be well heaped. R. S. c. 42, § 7.

Whoever measures charcoal for sale in any basket of less dimensions, or not sealed, forfeits, for each offense, five dollars. R. S. c. 42, § 8.

The municipal officers of towns may appoint some suitable person to seize and secure all baskets used for measuring coal, not according to the provisions hereof. R. S. c. 42, § 9.

Any measurer of wood, bark or charcoal who neglects or refuses to give to the owner or purchaser a certificate of the contents of a load, forfeits five dollars for each offense, and all the penalties hereinbefore provided, may be recovered by action of debt or complaint, half to the town where the offense is committed, and half to the prosecutor. R. S. c. 42, § 10.

Anthracite, bituminous, and other mineral coal shall be sold by weight; and two thousand pounds thereof are a ton. R. S. c. 42, § 11.

The municipal officers of towns shall annually appoint weighers of such coal, and receive such fees as said officers may establish, to be paid by the buyer. R. S. c. 42, § 12.

Unless coal is sold by the cargo, the seller shall, on request of the purchaser, cause it to be weighed by a sworn weigher, who shall make a certificate of the weight; and he shall deliver such

certificate to the buyer, before commencing a suit against him for the price of such coal. R. S. c. 42, § 13.

Every town, at its annual meeting, shall elect one or more surveyors of boards, plank, timber and joist; one or more surveyors of shingles, clapboards, staves and hoops; and every town containing a port of delivery whence staves and hoops are usually exported, shall also elect two or more viewers and cullers of staves and hoops; and the municipal officers of a town may, if they deem it necessary, appoint not exceeding seven surveyors of logs. R. S. c. 42, § 14.

All boards, plank, timber, and joist offered for sale shall, before delivery, be surveyed by a sworn surveyor thereof; and if he has doubts of the dimensions, he shall measure the same, and mark the contents thereon making reasonable allowance for rots, knots and splits, drying and shrinking. Pine boards three-fourths of an inch thick when fully seasoned, and in that proportion when partly seasoned, shall be considered merchantable; and no pine boards, except sheathing boards, shall be shipped for exportation beyond the United States, but such as are square edged, and not less than seven-eighths of an inch thick, nor less than ten feet long, under penalty of forfeiture to the town whence shipped. R. S. c. 42, § 15.

All shingles, packed for exportation beyond the state shall be sixteen inches long, free from shakes and worm holes, and at least three-eighths of an inch thick at the butt end when green, and if of pine, free from sap. They shall be four inches wide on an average, not less than three inches wide in any part, hold their width three-fourths of the way to the thin end, well shaved or sawed, and be denominated "number one"; but shingles intended for sale within the state, if of inferior quality or of less dimensions, may be surveyed and classed accordingly, under the denominations of "number two," and "number three." R. S. c. 42, § 16.

All shingles shall be split or sawed crosswise the grain; each bundle shall contain two hundred and fifty shingles, and if in square bundles, twenty-five courses, and be twenty-two inches and a half at the lay; and when packed to be surveyed as "number one," or for exportation, if in any bundle there are five shingles deficient in the proper dimensions, soundness or number to make two hundred and fifty merchantable shingles, or if any shingles are offered for sale, before they are surveyed and measured by a sworn surveyor of some town in the county where they

were made, and the quality branded on the hoop or band of the bundle, unless the parties otherwise agree, they are forfeited to the town where the offense is committed. R. S. c. 42, § 17.

All clapboards, exposed for sale or packed for exportation, shall be made of good sound timber, free from shakes and worm holes, and if of pine, clear of sap; and they shall be at least five-eighths of an inch thick on the back or thickest part, five inches wide, and four feet six inches long, and straight and well shaved or sawed. R. S. c. 42, § 18.

Staves packed for sale or exportation shall be well and proportionably split, and of the following dimensions, viz.:

White oak butt staves, at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge, and every part thereof;

White oak pipe staves at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three-quarters of an inch thick on the heart or thinnest edge;

White or red oak hogshead staves, at least forty-two inches long, and not less than half an inch thick on the least or thinnest edge;

White or red oak barrel staves, for a market out of the United States, thirty-two inches long; if for use within the United States, thirty inches long; and in either case, half an inch thick on the heart or thinnest edge;

All white or red oak hogshead or barrel staves at least, one with another, four inches in breadth, and no one less than three inches in breadth in the narrowest part; those of the breadth last mentioned shall be clear of sap; and two staves shall be sold as one cast; fifty casts, one hundred staves; and ten hundred staves, one thousand. R. S. c. 42, § 19.

✓ All hogshead hoops, exposed for sale or packed for exportation, shall be from ten to thirteen feet in length, and of oak, ash or walnut, and of good and sufficient substance, well shaved; if of oak or ash, at least one inch broad, and, if of walnut, three-quarters of an inch at the smaller end; the different lengths shall be made up in bundles by themselves; each bundle shall contain twenty-five hoops, four bundles shall make one hundred, and ten hundred hoops, one thousand; and every bundle, packed for sale or exportation, found to be deficient in number or dimensions, is forfeited to the town where it is exhibited. R. S. c. 42, § 20.

No person shall deliver on sale, or ship or attempt to ship for exportation, any boards, plank, timber, joists, shingles, clapboards, staves, or hoops, before they have been surveyed, measured, viewed or culled, as the case may be, and branded by the proper officer, and a certificate thereof given by him specifying the number, quality, and quantity thereof under a penalty of two dollars a thousand, by quantity or tale, as such article is usually sold, half to the town where the offense is committed, and half to the prosecutor; and in addition thereto the master or owner of any vessel, exporting any of the articles aforesaid beyond the limits of the United States contrary to law, shall, for the first offense forfeit two hundred dollars to the town whence said articles are exported; and if after conviction he commits a second offense in the same vessel, he forfeits the same sum, and the vessel is also forfeited to the town. R. S. c. 42, § 21.

In any action hereafter brought for the price of boards, plank, timber, joists, shingles, clapboards, staves or hoops, unless sold by the cargo, any failure to survey, measure, view or cull and brand the same and to give certificate thereof as required by section twenty-one of chapter forty-two of the revised statutes, shall not defeat recovery in such action, unless it appears that before delivery the purchaser requested such survey, measurement, view or culling, and branding and certificate. R. S. c. 42, § 22.

The master or owner of any vessel, having any of the lumber or other articles mentioned in the preceding section on board, for exportation as aforesaid, shall, before the vessel is cleared at the custom-house, produce to the collector a certificate from the proper officer, that the same have been duly surveyed, measured, viewed, or culled, as the case may require; and such master or owner shall likewise make oath before the collector, or a justice of the peace, whose certificate shall be returned to the collector, that the articles so shipped for exportation are the same articles thus surveyed, measured, viewed or culled, that he has no others on board of the like description, and that he will not take any others. R. S. c. 42, § 23.

If any person, duly elected a surveyor, measurer, viewer, or culler of any of said articles under this chapter, neglects or refuses to take the oath of his office and to serve therein, he forfeits three dollars to the town, and another person shall be elected to his place, who shall take the oath and serve as aforesaid under the like penalty; and the like proceedings shall be had, until the office is filled; or if any such officer duly qualified unnecessarily refuses or neglects to attend to the duties of his office

when requested, he forfeits three dollars; and if he connives at or willingly allows any breach of the provisions hereof, or practices any other fraud or deceit in his official duties, he forfeits thirty dollars to the use aforesaid. R. S. c. 42, § 24.

All pecuniary penalties aforesaid may be recovered by action of debt, indictment or complaint, and all other forfeitures, by a libel filed by the treasurer or any inhabitant of the town interested. R. S. c. 42, § 25.

Surveyors of logs may inspect, survey and measure all mill logs floated or brought to market or offered for sale in their towns, and divide them into several classes, corresponding to the different quality of boards and other sawed lumber, which may be manufactured from them; and they shall give certificates under their hands of the quantity and quality thereof to the person, at whose request they are surveyed. R. S. c. 42, § 26.

To surveyors of boards, plank, timber and joist, for viewing only, six cents a thousand feet; for measuring and marking the same, six cents more; and in that proportion for any part of a thousand, to be paid by the buyer. R. S. c. 117, § 21.

To surveyors of shingles and clapboards, for surveying and telling, six cents a thousand, to be paid by the buyer. Ib.

To viewers and cullers of staves and hoops, for barrel staves, twenty-five cents a thousand, and for hogshead and butt staves, thirty-three cents a thousand, whether refuse or merchantable; the merchantable to be paid for by the buyer, the refuse by the seller; and the culler of hoops shall be allowed forty cents a thousand. Ib.

To surveyors of mill logs at the rate of four cents a thousand feet board measure for viewing and inspecting, and two cents a thousand, in addition, for measuring and marking the quantity and quality of the logs, and making out and delivering certificates of the same, to be paid by the buyer. Ib.

Measurers of firewood and bark shall receive such fees for their services as the municipal officers of the town appoint, to be paid by the driver, and repaid by the buyer when brought by land, and by the wharfinger when brought by water. Ib.

CHAPTER CVII.

STANDARD WEIGHTS AND MEASURES.

The standard of weights and measures furnished by the United States and adopted by this state continues the standard of weights and measures for the state; and the state sealer of weights and measures shall cause all such weights and measures of a smaller denomination than those furnished by the United States, as are necessary to make a complete set, to be compared and regulated by the standards aforesaid; and keep, at the expense of the state, a suitable standard balance for gold, and for avoirdupois weights, to be kept with the weights and measures at the state house, and used only for regulating other weights and measures. R. S. c. 44, § 1.

Until otherwise provided, the treasurer of state, shall, at the state's expense, in the manner provided in the preceding section, procure and preserve as public standards, to be used only as such, the following measures, beams and weights, to wit: one bushel, one-half bushel, one peck, one-half peck, one ale quart, one wine gallon, one wine half gallon, one wine quart, one wine pint, one wine half pint, and one wine gill; said measures shall be made of copper or pewter, conformable in contents to said standard measures; and the diameter of the bushel shall not be less than eighteen inches and a half, containing thirty-two Winchester quarts; of the half bushel, not less than thirteen inches and three-quarters, containing sixteen Winchester quarts; of the peck, not less than ten inches and three quarters, containing eight Winchester quarts; and of the half peck, not less than nine inches, containing four Winchester quarts; the admeasurement to be made in each instance in the inside; also one ell, and one yard; one set of brass weights, to four pounds, computed at sixteen ounces to the pound, with fit scales and steel beam; also a good beam and scales, and a nest of troy weights, from one hundred and twenty-eight ounces, down to the least denomination, with the weight of each weight, and the length of each measure, marked or stamped thereon, and sealed with a seal, to be pro-

cured and kept by said treasurer; also one fifty-six pound weight, one twenty-eight pound weight, one fourteen pound weight, and one seven pound weight, of iron. R. S. c. 44, § 2.

The treasurer of each county, at the expense thereof, shall have one complete set of beams, and of brass, copper, pewter and iron weights, and of the measures before mentioned, except the bushel measure, proved and sealed by the state standards, and conformable thereto in breadth and contents; and preserve them for the use of such county only as standards; and once in every ten years, from July one, eighteen hundred and thirty-nine, he shall have them compared, proved and sealed by the state standards; for each neglect of said duty, he forfeits two hundred dollars to the state, to be recovered in an action of debt. R. S. c. 44, § 3.

The treasurers of towns, at the expense thereof, shall constantly keep a town seal, and, as town standards, a complete set of beams, weights, and copper and pewter measures, conformable to the state standards, except that the bushel measure, and the half bushel, peck and half peck measures may be of wood instead of copper or pewter, but of the same dimensions, and except also a nest of troy weights other than those from the lowest denomination to eight ounces; they shall cause all beams, weights and measures, belonging to their towns, to be proved and sealed by the state or county standards once in ten years, from July one, eighteen hundred and forty; and for every neglect of said duty they forfeit one hundred dollars, half to the town, and half to the prosecutor. R. S. c. 44, § 4.

The municipal officers of each town shall annually appoint a sealer of weights and measures therein, removable at pleasure, and may fill vacancies; for each month's neglect of this duty, they severally forfeit ten dollars, to be appropriated as in the preceding section. Any city may purchase and keep for use scales for weighing hay and other articles, appoint weighers, and fix their fees, to be paid by the purchaser. R. S. c. 44, § 5; 68 Me. 470.

The municipal officers of cities and towns may appoint a deputy sealer of weights and measures, to hold office during their pleasure, and fix his compensation. Such deputy shall act under the direction of the sealer of weights and measures in the municipality, and shall have the same authority as the sealer in the performance of his duties. P. L. 1909 c. 158.

Whoever, so appointed and notified thereof, refuses for seven days to accept the office and be sworn, forfeits five dollars, half to the town, and half to the prosecutor; when sworn, he shall receive the standards and seal from the treasurer, giving a receipt therefor, describing them and their condition, and therein engaging to re-deliver them at the expiration of his office in like good order; and he shall be accountable for their due preservation while in his possession. R. S. c. 44, § 6; 68 Me. 470.

The sealers of weights and measures in the several cities and towns shall annually give public notice by advertisement, or by posting in one or more public places in their respective cities and towns notices to all inhabitants or persons having usual places of business therein and who use weights, measures or balances for the purpose of selling any goods, wares, merchandise or other commodities or for public weighing to bring in their weights, measures and balances to be adjusted and sealed. Such sealers shall attend in one or more convenient places and shall adjust, seal and record all weights, measures and balances so brought in. R. S. c. 44, § 7.

After giving said notice the said sealers shall go to the houses, stores and shops of persons who neglect to comply therewith, and having entered the same with the assent of the occupants thereof, shall adjust and seal their weights, measures and balances. R. S. c. 44, § 8.

Said sealers shall go once a year and oftener if necessary, to every hay and coal scale, to every platform balance within their respective cities and towns that cannot be easily or conveniently removed, and shall test the accuracy of and adjust and seal the same. R. S. c. 44, § 9.

All persons using any scales, weights or measures for the purpose of buying or selling any commodity, may, when they desire it, have the same tested and sealed by the sealers of weights and measures at the office of any of said sealers. R. S. c. 44, § 10.

In case a sealer of weights and measures cannot seal any weights, measures and balances in the manner before provided, he may mark them with a stencil, or by other suitable means so as to show that they have been inspected; but he shall in no case seal or mark as correct any weights, measures or balances which do not conform to the standards. If such weights, measures or balances can be readily adjusted by such means as he has at hand, he may adjust and seal them; but if they cannot be readily adjusted, he shall affix to such weights, measures or bal-

ances a notice, forbidding their use until he is satisfied that they have been so adjusted as to conform to the standards; and whoever removes said notice without consent of the officer affixing the same, shall for each offense forfeit a sum not exceeding fifty dollars, one-half to the use of the city or town and one-half to the use of the complainant. R. S. c. 44, § 11.

A sealer when visiting the place of business of any person for the purpose of testing any weights, measures or balances, may use for that purpose such weights, measures or balances as he can conveniently carry with him, and each city and town shall furnish its sealer with one or more duplicate sets of weights, measures and balances, which shall at all times be kept to conform to the standards furnished by the state, and all weights, measures and balances so sealed shall be deemed to be legally sealed the same as if tested and sealed with the standard weights, measures and balances. R. S. c. 44, § 12.

A sealer of weights and measures may seize without a warrant such weights, measures or balances as may be necessary to be used as evidence in cases of violation of the law relating to the sealing of weights and measures, such weights, measures or balances to be returned to the owners, or forfeited as the court may direct. R. S. c. 44, § 13.

When a complaint is made to a sealer of weights and measures by any person that he has reasonable cause to believe or when such sealer himself has reasonable cause to believe that a weight, measure or balance used in the sale of any commodity within his city or town is incorrect, the said sealer shall go to the place where such weight, measure or balance is and shall test the same, and mark it according to the result of the test applied thereto; and if the same is incorrect and cannot be adjusted, the said sealer shall attach a notice thereto, certifying that fact, and forbidding the use thereof until it has been made to conform to the authorized standard. Any person using a weight, measure or balance after a sealer has demanded permission to test the same, and has been refused such permission shall be liable to a penalty of not less than ten, nor more than one hundred dollars. R. S. c. 44, § 14.

All weights, measures and balances that cannot be made to conform to the standard shall be stamped "condemned" or "CD" by the sealer, and no person shall thereafter use the same under the penalties provided in the case of the use of false weights and measures. R. S. c. 44, § 15.

Before any weights, measures, scales, steelyards, beams or balances are offered for sale or used, they shall be sealed by a public sealer of weights and measures. R. S. c. 44, § 16.

All measures, by which fruit and other things, usually sold by heaped measure, are sold, shall be conformable in capacity and breadth, to the public standard. Such articles as are sold or exchanged in any market or town in the state by gross or avoirdupois weight, shall be sold or exchanged as follows: twenty-five avoirdupois pounds constitute one quarter; four quarters, one hundred; and twenty hundreds, one ton; and all other articles, usually sold by tale, shall be sold by decimal hundred. R. S. c. 44, § 17.

Whoever knowingly uses a false weight, measure, scale, balance or beam, or after a weight, measure, scale, balance or beam has been adjusted and sealed, alters it so that it does not conform to the public standard and fraudulently makes use of it, shall forfeit for each offense fifty dollars, one-half to the use of the city or town and one-half to the use of the complainant; and every sealer who has reasonable cause to believe that a weight, measure, scale, balance or beam has been altered since it was last adjusted and sealed shall enter the premises in which it is kept or used and shall examine the same. R. S. c. 44, § 18.

Whoever sells by any other weights, measures, scales, beams or balances than those which have been sealed as before provided, shall forfeit a sum not exceeding twenty dollars for each offense, and when by the custom of trade such weights, measures, scales, beams or balances are provided by the buyer, he shall, if he purchases by any other, be subject to a like penalty to be recovered by an action of tort to the use of the complainant. R. S. c. 44, § 19.

The city council of a city may by ordinance, and a town may by by-law, provide that the sealer of weights and measures for their city or town shall be paid by a salary, and that he shall account for and pay into the treasury of the city or town the fees received by him by virtue of his office; and where such salary is paid no fees shall be charged for services rendered under section seven. R. S. c. 44, § 20.

The county commissioners, at the expense of their several counties, shall erect and forever maintain therein, at such place or places remote from electrical disturbances as the public convenience requires, a true meridian line to be perpetuated by stone pillars with brass or copper points firmly fixed on the tops

thereof, indicating the true range of such meridian; and shall protect the same and provide a book of records to be kept by the clerk of courts, or by a person appointed by them nearer to such structure, and accessible to all persons wishing to refer thereto. R. S. c. 44, § 21.

Such structures shall be under the care and custody of such clerks; and any surveyor residing in said county or engaged in surveying therein, shall have free access thereto for the purpose of testing the variation of the magnetic needle. R. S. c. 44, § 22.

When such meridian lines have been established and completed every land surveyor shall, at least annually, before making any survey, test and verify his compass, or other instrument using the magnetic needle, by the meridian line so established in the county where his surveys are to be made, and shall enter the declination of such needle from the true meridian in the book mentioned in section twenty-one, together with the style and make of such instrument and its number, if any, and the date and hour of observation, and subscribe his name thereto for future reference; and shall insert corresponding entries as to date and declination, in his field notebooks, which field notebooks shall also show dates at which his surveys are made. Neglect or refusal to comply with this section shall render such surveyor liable to a penalty of twenty-five dollars for each neglect, to be recovered on complaint in the county where any survey is made, half to the complainant and half to the county. The provisions of this section shall not apply to such surveys as are made by angles from some fixed, permanent line, or by a solar instrument and independent of the magnetic needle. R. S. c. 44, § 23.

The county commissioners at the expense of the several counties shall also erect and forever maintain therein, at such place or places as the public convenience may require, a standard of length of not less than one hundred feet, with suitable subdivisions marked thereon. Such standard may consist of stone monuments permanently fixed with metal plates on the tops thereof, properly marked and protected; or of a steel bar of the necessary length properly marked and suitably placed and protected. All such standards shall be made to correspond with the standard of the United States Bureau of Weights and Measures, and shall be provided with proper means for determining the tension of tapes or chains during comparison. They shall be under the care and custody of the clerk of courts, who shall keep a suitable book for the record of comparisons, and they shall be

accessible to any person for comparing any tape, chain, or other linear measure. Every surveyor shall before making surveys in this state, and at least annually, compare his tape or chain used in such surveys with the standard in the county in which he resides or in which surveys are to be made; and shall record the result in the book provided for that purpose, giving description of such tape or chain, with the difference, if any, between the same and such standard, together with the date and temperature and the tension on such tape or chain at the time of comparison. When such standard shall have been completed in any county, any surveyor residing or making surveys in such county who shall neglect or refuse to comply with the terms of this section, shall be liable to the penalties and disability set forth in section twenty-three. R. S. c. 44, § 24.

Whoever willfully displaces, alters, defaces, breaks or otherwise injures any of the pillars or points, plates, enclosures, bars, locks, bolts, or any part of the structure of any meridian line or standard of length shall forfeit not exceeding one hundred dollars, to be recovered by indictment, half to the prosecutor and half to the county, and shall also be liable in an action of debt for the amount necessarily expended in repairing damages caused by his act. R. S. c. 44, § 25.

When such meridian line or standard of length is established, repaired or rebuilt in any county, the governor with the advice and consent of the council shall appoint a competent commissioner, not necessarily a resident of this state, to inspect and verify the same. Such commissioner shall in case of a meridian line verify the same by astronomical observation, and in his report shall give an accurate description of such structures, its latitude and longitude, and the declination of the needle at the time; and in case of a standard of length shall give a description of the structure, its location and exact length as determined by comparison with some authentic standard from the United States Bureau of Weights and Measures. All such reports shall be full and accurate and be deposited in the office of the secretary of state, and a certified copy shall be filed and recorded in the office of the clerk of courts in the county where such structure is situated. Such commissioner shall receive from the state such just compensation as the governor and council shall allow. R. S. c. 44, § 26.

(NOTE: Sealers of weights and measures shall annually seal all measures used for sale of milk, R. S. c. 39, § 11; duties of, as to charcoal baskets, R. S. c. 42, § 7; fees of, R. S. c. 117, § 21.)

CHAPTER CVIII.

INSPECTION OF FLOUR, NAILS, PAPER, OILS, PETROLEUM, COAL OIL, FOOD.

The municipal officers of towns may appoint annually in their towns, one or more suitable persons not interested in the manufacture and sale of flour to be inspectors thereof for one year from the date of appointment. R. S. c. 39, § 1.

Such inspector, before entering upon his duties, shall be sworn to the faithful and impartial discharge thereof before the town clerk, who, upon payment of fifty cents, shall give him a certificate of his appointment and qualification, to be exhibited on the demand of any person interested in any inspection made by him. R. S. c. 39, § 2.

Inspection of flour shall be for the purpose of ascertaining its soundness; every package inspected shall be opened sufficiently to allow a trier to be passed through it, and a sample of the whole length of the passage shall be taken out and examined by the inspector, who shall mark upon each package with a brand or stencil, the words, "sound" or "unsound," as the quality of the flour contained in each is found, and his name, residence, office and the year of inspection. He shall keep a record of all flour inspected by him, in a suitable book which he shall exhibit to any person requiring it. R. S. c. 39, § 3.

If an inspector falsely and fraudulently marks any package of flour, he shall be fined five dollars for every such package, and forfeits to any person injured thereby three times the amount of damage, in an action of debt. R. S. c. 39, § 4.

Whoever, with intent to defraud, alters, obliterates or counterfeits the marks of an inspector, and whoever, with such intent, places upon any package of flour, marks falsely purporting to be inspection marks, shall be fined not exceeding fifty dollars for each offense and on conviction of placing such false marks on as many as ten packages at one time, shall also be imprisoned not exceeding ten months. R. S. c. 39, § 5.

The purchaser may require flour to be inspected before delivery. The inspector's fees shall be five cents a package for lots of less than ten; for lots of more than ten and not exceeding twenty, two cents a package; and for every package exceeding twenty, one cent; to be paid by the person demanding inspection. R. S. c. 39, § 6.

Inspectors shall, when required, determine whether the flour conforms to and equals the sample furnished, and shall mark, with some distinct and intelligible mark, the packages that are found like the sample, and for this service they may charge an additional compensation of one-half cent a package. R. S. c. 39, § 7.

Nothing herein contained prohibits any contract for the manufacture or sale of uninspected flour, when inspection is not required by the buyer or the seller. R. S. c. 39, § 8.

All oils sold under the names of sperm, summer, fall and winter oils, are deemed to be sold for pure sperm oil, the test of which is Southworth's oleometer. Whoever sells under said names, any oils which are adulterated by the mixture of an inferior article, without disclosing the full extent of adulteration to the purchaser, forfeits to the prosecutor, fifteen dollars for each offense; and the oil so sold shall be deemed whale oil, and the seller is liable to the purchaser for the difference between pure sperm and whale oil, to be recovered in an action on the case. R. S. c. 40, § 8.

In towns containing two thousand inhabitants or more, the municipal officers, on or before the first day of May annually, shall appoint one or more persons, and fix their compensation, to be inspectors of petroleum, coal oil, and burning fluid, who, when requested, shall inspect such oils and burning fluids by applying the fire test with G. Tagliabue's pyrometer or some other accurate instrument, to ascertain the igniting or explosive point thereof in degrees of Fahrenheit's thermometer, and they shall cause every vessel or cask thereof, by them so inspected, to be plainly marked by the name of such inspector, the date of inspection, and the igniting or explosive point of the contents thereof. R. S. c. 40, § 9.

When a cask or vessel of such oil or fluid will not bear the fire test of at least one hundred and twenty degrees Fahrenheit without ignition or explosion, the same shall be marked as aforesaid, and also "unsafe for illuminating purposes." If an inspector knowingly puts false marks upon such casks or vessels inspected

by him, he shall be fined not exceeding five hundred dollars, or be imprisoned six months. R. S. c. 40, § 10.

Every person and corporation engaged in manufacturing petroleum, coal oil or burning fluid, shall cause every cask or other vessel thereof to be so inspected and marked, by a sworn inspector. Whoever manufactures or sells such oil or burning fluid not so inspected and marked in this state, or that has been so inspected and marked as unsafe for illuminating purposes, shall pay a fine not exceeding five hundred dollars, or be imprisoned six months. R. S. c. 40, § 11.

The municipal officers of towns, and the police of cities, may at all times examine all such oils and fluids kept in their towns for sale, and cause them to be inspected and tested; and they shall do so in all cases where they are informed or believe that the same are kept for sale in violation of the law; and cause the keeper and seller to be prosecuted therefor. R. S. c. 40, § 12.

All persons or corporations engaged in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, in cans of a capacity of not less than five gallons, with their names, or other marks or devices branded, stamped, engraved, etched, impressed or otherwise produced upon such cans or anything connected therewith or appertaining thereto, may file in the office of the town or city clerk in which their principal place of business is situated, a description of the names and marks aforesaid, used by them, and cause the same to be published once a week for three successive weeks, in any weekly paper published in the county in which said notice may have been filed as aforesaid. R. S. c. 40, § 13.

Whoever knowingly and willfully, without the written consent of the owner who has complied with the provisions of the preceding section uses, buys, sells, fills or traffics in any such can so marked as aforesaid, or defaces, covers up or obliterates the names, marks or devices thereon, with intent to use, fill, sell, buy, dispose of or traffic therein, or to convert the same to his own use, shall, on complaint, be punished by a fine of not more than twenty dollars. R. S. c. 40, § 14.

On and after July first, in the year nineteen hundred and five, all milk or cream purchases by any person, firm or corporation, for use in or to be resold by any creamery in this state, shall be weighed and shall be tested by the Babcock test to ascertain the amount of butter fat per pound therein contained; and the value of the cream or milk thus purchased shall be determined by the

amount of butter fat per pound as thus ascertained. The test herein provided shall be made by the owners or operators of the creamery purchasing as aforesaid, but upon petition in writing, signed by twenty-five per cent or more of the patrons of any creamery and addressed to the commissioner of agriculture, or upon petition in writing signed by the owner or operator of any creamery and addressed to said commissioner, one or more tests shall be made by, or under the direction of said commissioner, and the finding of said commissioner shall be conclusive upon all parties therein concerned. *Provided, however,* that when the total number of patrons of any one creamery exceeds one hundred then the number of petitioners herein required by patrons need not exceed thirty. All samples of cream treated by said test shall be weighed and the standard unit for testing shall be eighteen grams. P. L. 1905 c. 76, § 1.

Any person, firm or corporation, or the servant or agent of any person, firm or corporation, who shall violate the provisions of the preceding section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding fifty dollars or by imprisonment not exceeding thirty days for every such violation. P. L. 1905 c. 76, § 2.

The director of the Maine agricultural experiment station shall analyze, or cause to be analyzed, samples of agricultural seeds sold or offered for sale under the provisions of chapter thirty-nine of the revised statutes. He shall take in person or by deputy, a sample, not exceeding four ounces in weight, for said analysis, from any lot or package of agricultural seeds which may be in the possession of any grower, importer, agent or dealer in the state. P. L. 1905 c. 66, § 1.

There shall be appropriated annually from the state treasury the sum of one thousand dollars in favor of the Maine agricultural experiment station, and the same may be expended in the analysis of food and agricultural seeds. So much of said appropriation shall be paid by the treasurer of state to the treasurer of said experiment station as the director of said station may show by his bills has been expended in performing the duties required by the acts regulating the sale and analysis of food and the sale of agricultural seeds. Such payment shall be made quarterly upon the order of the governor and council, who shall draw a warrant for that purpose. P. L. 1905 c. 66, § 2.

It shall be unlawful for any person, persons or corporation within this state to manufacture for sale, to sell, or to offer or

expose for sale any article of food which is adulterated or misbranded within the meaning of this act. P. L. 1905 c. 68, § 1.

The term food, as used in this act, shall include every article used for food or drink by man, horses or cattle. P. L. 1905 c. 68, § 2.

For the purpose of this act an article of food shall be considered as adulterated or misbranded :

First. If any substance or substances be mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any inferior substance or substances be substituted wholly or in part for this article.

Third. If any necessary or valuable constituent of the article be wholly or in part abstracted.

Fourth. If it be in imitation of, or sold under the name of another article.

Fifth. If it be colored, coated, polished or powdered whereby damage is concealed, or if it be made to appear better or of greater value than it is.

Sixth. If it contains poisonous ingredients, or if it contains any antiseptic or preservative not evident or not known to the purchaser.

Seventh. If it consists wholly or in part of a diseased, filthy, decomposed or putrid animal or vegetable substance.

Eighth. If the package or label shall have any statement purporting to name any ingredient or substance as not being contained in the article, which statement shall be untrue in any particular.

Ninth. If the package or label shall bear any statement purporting to name the substance or substances of which the article is made, which statement shall not fully give the names of all substances contained therein.

Tenth. If it be labeled or branded so as to deceive or mislead the purchaser in any particular.

Provided, that any article of food which is adulterated within the meaning of this act, but which does not contain any poisonous or deleterious ingredient, may be manufactured or sold if the same shall be plainly labeled, branded or tagged so as to show the exact character thereof. *Provided further*, that nothing in this act shall be construed as requiring proprietors, manufac-

turers or sellers of proprietary foods which contain no unwholesome substances to disclose their trade formulas, except that in the case of baking powders each can or package shall be plainly labeled so as to show the acid salt or salts contained therein. P. L. 1905 c. 68, § 3.

The director of the Maine agricultural experiment station shall analyze, or cause to be analyzed, samples of articles of food on sale in Maine, suspected of being adulterated, and at such times and to such extent as said director may determine. And said director, in person or by deputy, shall have free access at all reasonable hours to any place wherein articles of food are offered for sale, and upon tendering the market price of any such article may take from any person, persons or corporations samples for analysis. P. L. 1905 c. 68, § 4.

The results of all analyses of articles of food made by said director shall be published by him in the bulletins or reports of the experiment station, together with the names of the persons from whom the samples were obtained, and the names of the manufacturers thereof. The said director may also adopt or fix standards of purity, quality or strength when such standards are not specified or fixed by law and shall publish them, together with such other information concerning articles of food as may be of public benefit. P. L. 1905 c. 68, § 5.

Whoever adulterates or misbrands any article of food as defined in this act, or whoever sells, offers or exposes for sale any adulterated or misbranded article of food, shall be punished by a fine not exceeding one hundred dollars for the first offense and not exceeding two hundred dollars for each subsequent offense. P. L. 1905 c. 68, § 6.

Whenever said director becomes cognizant of the violation of any of the provisions of this act, he shall report such violation to the commissioner of agriculture, and said commissioner shall prosecute the party or parties thus reported. P. L. 1905 c. 68, § 7.

No action shall be maintained in any court in this state on account of any sale or other contract made in violation of this act. P. L. 1905 c. 68, § 8.

Sections ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of chapter one hundred and twenty-nine of the revised statutes and all acts or parts of acts inconsistent herewith, are hereby repealed. P. L. 1905 c. 68, § 9.

CHAPTER CIX.

PILOTS.

The governor, with the advice and consent of the council, may appoint pilots for any port, in which a majority of the ship owners and masters apply in writing therefor and recommend suitable persons; and shall give to each of them branches or warrants for the execution of the duties of his office; and such pilots shall, before entering upon said duties, give bond to the treasurer of state in the sum of five thousand dollars for the faithful performance thereof. R. S. c. 38, § 1.

Such pilots shall take charge of all vessels, drawing nine feet of water and upwards, bound into, and of all such vessels, except coasting and fishing vessels, bound to sea out of any of said ports, and shall pilot them into or out of the port assigned them, first showing to the master thereof their branch and informing him of their fees; but any master may pilot his own vessel without being subject to pay therefor. R. S. c. 38, § 2.

The governor and council may fix the fees of pilotage; specify the same in the branch of each pilot; transmit to each collector of customs in said ports a schedule thereof, to be hung up by him for public inspection; hear and determine all complaints against such pilots for misconduct, and suspend or remove them and appoint others in their places. R. S. c. 38, § 3.

If any vessel, while under the charge of such pilot, is lost, run aground, or cast away, through his fault, he is liable to pay the owner or insurer a just compensation for any damage thereby sustained. R. S. c. 38, § 4.

CHAPTER CX.

SHIP OWNERS, WRECKS AND SHIPWRECKED GOODS.

No ship owner is answerable beyond the amount of his interest in the vessel and freight, for the embezzlement, loss or destruction, by the master and mariners, of any property put on board of such vessel; nor for any act of theirs without his privity or knowledge; but if several owners of property on the same voyage suffer damage as aforesaid, and the whole vessel and her freight for the voyage are not sufficient to compensate each of them, they shall be compensated by the owner of the vessel in proportion to their respective losses, and for that purpose, they or the owner of the vessel, or any of them, may prosecute a bill in equity for discovery and payment of the sum, for which said owner is liable to the parties entitled thereto. R. S. c. 38, § 5; 65 Me. 545.

For the purposes of the preceding section the charterer of any vessel, navigating the same at his own expense, shall be deemed the owner; and if loss happens to any person, from the causes therein mentioned, and it is compensated from the freight or vessel, the owner thereof may recover the amount from the charterer. R. S. c. 38, § 6.

The governor, with the advice and consent of the council, may appoint in counties where needed, commissioners of wrecks and shipwrecked goods, removable at pleasure; each shall give bond to the judge of probate for his county for the faithful discharge of his duties; and any person interested may have the same remedy for the breach of such bond, as on administrators' bonds. R. S. c. 38, § 7.

Every such commissioner, immediately on receiving information of any shipwreck, or of the finding of any shipwrecked property of any kind, to the amount of one hundred dollars on any of the shores or waters within his county, shall immediately repair to the place where the property is, and if the same is not in the custody of any owner or agent, he shall take charge of it, and secure and preserve the same for the owner. R. S. c. 38, § 8.

The commissioner, in such case, may employ as many persons as he thinks necessary, to assist in preserving the property; appoint guards to receive it; suppress all tumults and disorders; and any person who disobeys any of his lawful orders, forfeits for each offense not exceeding ten dollars, to be recovered for the town in an action on the case in the name of the commissioner. R. S. c. 38, § 9.

The commissioner shall on every such occasion, take an inventory of all the property coming into his possession; and when required by any person interested, make oath thereto; and shall deliver a copy thereof, if required, together with all such property, to the person lawfully authorized to receive it; *provided*, that there is first paid or secured to him a reasonable compensation for his services, and such custom-house duties and other charges, if any, as he has paid, or become liable to pay, on account of the property in question. R. S. c. 38, § 10.

No person interested in any such property shall be held to pay to any person, other than a commissioner, any compensation for services or expenses in taking or securing any property, except property taken or secured before the arrival of the commissioner; in which case the commissioner shall, upon due hearing of all parties interested, determine the amount of compensation by his award in writing; which shall be final, unless the sum awarded to any party exceeds fifty dollars. R. S. c. 38, § 11.

If the commissioner and the party interested disagree respecting the commissioner's charges, or if the award aforesaid exceeds fifty dollars, any party aggrieved may appeal to the judge of probate for the county where the property is situated; who shall, either in vacation or term time, on due notice, decide the case in a summary manner, and issue, under the seal of the court, any process necessary to carry his decision into effect. R. S. c. 38, § 12.

Whoever after the arrival of the commissioner and without his direction or that of some person interested, takes, detains or intermeddles with any such property, forfeits not exceeding one thousand dollars for each offense, to be recovered in an action of debt by the commissioner or any person interested, to his own use. R. S. c. 38, § 13.

The commissioner shall, as soon as practicable, publish all the facts and particulars of the shipwreck and of the property found, in such manner as shall be best for the information of all parties;

and in case of neglect, he forfeits fifty dollars to the interested party first suing therefor in an action of debt. R. S. c. 38, § 14.

He may dispose of so much of the property by public auction within thirty days after taking it, as is necessary to pay the duties thereon at the custom-house; and whenever necessity requires it, may, in the same way sell such as is perishable, giving reasonable public notice, and if practicable, in a public newspaper. R. S. c. 38, § 15.

If no person interested appears within one year after such property is taken into custody, and establishes his claim thereto, the commissioner shall present, under oath, to the treasurer of state, an inventory of the property; and if sold, an account of the sales, with an account of all moneys paid by him as duties and expenses thereon; and pay and deliver to the treasurer the balance of such accounts, with all the property remaining in his hands for the use of the state; and if he neglects to do so for sixty days after the expiration of such year, the treasurer shall cause a suit therefor to be commenced in behalf of the state. R. S. c. 38, § 16.

The treasurer may make to the commissioner on the settlement of his account as aforesaid, a just compensation for his services and expenses, to be ascertained in case of disagreement between them, as provided in section twelve. R. S. c. 38, § 17.

CHAPTER CXI.

LIGHTERS AND HARBORS.

Every boat or lighter employed in carrying stones, sand or gravel, shall be marked at light water mark, and at least at five other places, with the figures four, twelve, sixteen, twenty-four and thirty, legibly made on the stem and stern post thereof; expressing the weight which such boat or lighter is capable of carrying, when the lower part of the respective numbers touches the water in which it floats; and such marks shall be inspected yearly, and when found illegible in whole or in part, they shall be renewed. R. S. c. 38, § 18.

The master or owner, who uses his craft without such marks, and any person, who falsely marks any such boat or lighter, forfeits fifty dollars to be recovered by any prosecutor in an action of debt. R. S. c. 38, § 19.

The municipal officers of every town where boats and lighters are employed for the purposes aforesaid, shall annually, in April or May, appoint some suitable person who shall be sworn, to examine and ascertain the capacities of all such boats and lighters, and mark them as above prescribed; and said officers shall establish and regulate the fees therefor. R. S. c. 38, § 20.

When such inspector thinks that the burden or capacity of any such boat or lighter is altered by repairs or otherwise, he shall forthwith ascertain the same anew, and mark it accordingly. R. S. c. 38, § 21.

No master of any vessel shall throw overboard ballast in any road, port or harbor, under penalty of sixty dollars; and no person shall take any stone or other ballast from any island, beach or other land, without consent of the owner, under a penalty not exceeding seven dollars for each offense, to be recovered in an action of debt by any prosecutor, half for himself and half for the town where the offense is committed. R. S. c. 38, § 22.

CHAPTER CXII.

PORT WARDENS.

Port wardens shall be elected in any city or town situated on navigable waters, upon the petition of ten or more citizens engaged in commercial pursuits therein. R. S. c. 38, § 23.

If in such city or town, there is a board of trade duly incorporated, said board shall annually elect the port wardens; otherwise the municipal officers thereof shall annually elect them. R. S. c. 38, § 24.

Said boards of trade, by their managers, or said municipal officers, shall forthwith, on complaint of any person aggrieved, after hearing, remove for cause, any port warden by them elected, and all vacancies shall be filled by said authorities. R. S. c. 38, § 25.

Port wardens shall be men of commercial or nautical experience, and shall hold office one year from each election and until others are qualified in their stead, except when removed for cause, or when elected to serve out an unexpired term; and they shall be sworn faithfully to perform their duties. R. S. c. 38, § 26.

They shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein. R. S. c. 38, § 27.

When requested by any person interested, port wardens shall proceed on board of any vessel on her arrival in port, and survey her hatches, and notice if they are properly caulked and secured; and if they have been opened by some person not a port warden, that fact shall also be noticed, and all the facts in relation to the hatches of said vessel shall be entered in the official record. They shall also examine the condition and stowage of the cargo of any vessel, and if any portion of it is found to be damaged, they shall inquire into and ascertain the cause thereof, and make a memorandum of the same, noting particularly the marks and numbers of each damaged package, and shall enter the same in full in the records of their office; and for the purpose of ascertaining the extent of said damage, they shall examine goods, wares or merchandise of any description, in any warehouse or store, or on any wharf or at any place where the same are; *provided*, that said goods, wares or merchandise are part of the cargo, and are claimed to be damaged; and they shall note particularly the marks and numbers of every package examined by them and the extent of the damage received, and all the facts in relation thereto shall be entered in the records of their office. R. S. c. 38, § 28.

When requested in writing by any person interested, port wardens shall also survey the cargo of any vessel arriving in port in distress; and shall make and record in the books of their office, a full and particular report of the condition of said cargo, and of their recommendations in relation to the disposal of such portions of the same as in their judgment may not be in condition for reshipment, reference being had to the best interests of all concerned. R. S. c. 38, § 29.

When requested in writing by any person interested, they shall also survey any vessel which may have suffered wreck or damage, or which may be deemed unseaworthy; and such port wardens shall call to their assistance one merchant and one ship-

wright, both of whom shall be competent and disinterested persons and shall be sworn faithfully to perform their duties in the examination and survey; and said surveyors and port wardens shall examine the hull, spars, sails, rigging and all the appurtenances of said vessel, and make and record in the books of the port warden's office a full and particular report of all the surveys by them held on said vessel, specifying what damage she has sustained and what repairs in their opinion are necessary to render her again seaworthy; and the aforesaid report shall be presumptive evidence of the necessity of such repairs and of the sufficiency of the same when made. R. S. c. 38, § 30.

Port wardens shall be allowed fees to be paid by the person requesting their services, as follows: For survey of hatches, two dollars; for each survey of cargo on shipboard, one dollar; for certificate of stowage of cargo, two dollars; for each subsequent certificate, one dollar; for each survey to ascertain extent of damage, two dollars; for each certificate thereof, two dollars; for each survey required by section twenty-nine, four dollars; for each certificate thereof, two dollars; on each survey as required by section thirty, for each person, two dollars; for each certificate thereof, two dollars. R. S. c. 38, § 31.

In the cities and towns for which they are elected, port wardens shall have exclusive jurisdiction in all matters pertaining to their duties, as specified in this chapter; and any other person who performs or attempts to perform any such duties in any city or town wherein there is a port warden, forfeits for each offense one hundred dollars, to be recovered in an action of debt by any prosecutor. R. S. c. 38, § 32.

CHAPTER CXIII.

HARBOR MASTERS.

Selectmen of towns, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall annually appoint a harbor master who shall be subject to all the duties and liabilities of said office as prescribed by law, and in case of the failure or refusal of said harbor master to perform said duties, he shall be subject to a fine of twenty-five

dollars, for the benefit of the town, for each willful neglect or refusal to attend the same. The selectmen may establish his compensation and may for cause by them declared in writing, after due notice to such officer and hearing thereon, if requested, remove him and appoint another in his stead. R. S. c. 4, § 100.

The municipal authorities of all maritime towns and plantations shall make rules and regulations for the keeping open of convenient channels for the passage of vessels in the harbors and water ways of the towns for which they act, and shall establish the boundary lines of such channels, and assign suitable portions of their harbors for anchorages. R. S. c. 4, § 101.

Such rules and regulations as may be made by such municipal authorities shall be enforced and carried out by the harbor master of said town, who may appoint a deputy to act in case of his absence or disability. R. S. c. 4, § 102.

In all harbors wherein channel lines have been established by the municipal authorities, as provided in section one hundred and one, and in all other harbors where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, he shall assign and indicate to the master or owner of boats and vessels the location which they may occupy with or for mooring purposes, the kind of mooring to be used, and shall change the location of said moorings from time to time when the crowded condition of such harbor or other conditions render such change desirable; he shall assign mooring privileges in such waters in all cases where individuals who own the shore rights or have an interest in the same are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently as the case may be, fronting their land, if so requested, but not thereby to encroach upon the natural channel, or channels established by municipal authorities. The municipal officers shall fix the compensation of the harbor master for such services rendered. R. S. c. 4, § 103.

In case of the neglect or refusal of the master or owner of any boat or vessel, to remove his mooring or to replace it by one of different character, when so directed by the harbor master, said harbor master shall cause said mooring to be removed, or shall make such change in the character thereof as required, and shall collect from the master or owner of such boat or vessel the sum of two dollars for either of such services rendered, and also the necessary expenses. R. S. c. 4, § 104.

Such harbor master shall, upon complaint to him by the master, owner or agent of any vessel, cause any other vessel or vessels obstructing the free movement or safe anchorage of such vessel to remove to a position to be designated by him, and to cause, without any complaint being made to him, any vessels anchoring within the channel lines as established by the municipal authorities as provided in section one hundred and one to remove to such anchorage as he may designate. R. S. c. 4, § 105.

If such vessel has no crew on board, or if the master or other person in charge neglects or refuses to move such vessel as directed by the harbor master, then and in that case such harbor master may put a suitable crew on board and move such vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners thereof, and shall charge two dollars, to be paid by the master or owner of such vessel, which charge together with the cost of the crew for removing such vessel the harbor master may collect by suit. R. S. c. 4, § 106.

Harbor masters may arrest and deliver to the police authorities on shore any person committing an assault upon them or another person acting under their authority. R. S. c. 4, § 107.

CHAPTER CXIV.

TREES, PRESERVATION OF—BROWN TAIL AND GYPSY MOTH.

For the purposes of this act the gypsy and brown-tail moths in their different stages, are hereby declared public nuisances, and their suppression is authorized and required, but no owner or occupant of real estate infested by such nuisance shall by reason thereof be liable to an action civil or criminal except to the extent and in the manner and form herein set forth. P. L. 1907 c. 15, § 2.

All nurseries or places where trees, shrubs, vines and plants are grown or offered for sale, shall be inspected at least once a year by the state entomologist appointed by the commissioner of agriculture, or by some person acting under the direction of the state entomologist and by him deemed competent, and if no

dangerous insects or fungous diseases are found therein a certificate to that effect shall be given. If such pests are found therein, the owner of the stock shall take such measures to destroy the same as the state entomologist shall prescribe, and no certificate as aforesaid shall be given until the said entomologist has satisfied himself that all such pests have been suppressed. The state entomologist, either personally or through competent assistants as aforesaid, may inspect any orchard, field, garden or roadside in public or private grounds, which he or they may know or have reason to suspect to be infested with the San Jose scale or any serious pest or infectious disease, when in his or their judgment such pests or infectious diseases are a menace to adjoining owners; and the state entomologist may order the owner, occupant, or person in charge thereof, in writing, to properly spray or give other suitable treatment, or to cut and destroy any such diseased trees or shrubs, if in the opinion of the state entomologist such action is necessary. If the owner of such orchard, field or garden neglects or refuses to comply with such written order of the said entomologist, he shall be fined not less than ten dollars nor more than fifty dollars for each offense. P. L. 1909 c. 34, § 1.

All nursery stock shipped into this state from any other state, country or province shall bear on each box or package a certificate that the contents of said box or package have been investigated by a duly authorized inspecting officer, and that said contents appear to be free from all dangerous insects and diseases. The state entomologist, or his competent assistants as aforesaid, shall have power to inspect, at the point of destination, all stock coming into the state, whether under certificate or not, and should such stock be found to be infested with any injurious insects or plant diseases, the state entomologist shall cause it to be destroyed or returned to the consignor at the consignor's expense, if he shall so elect. All prosecutions under the provisions of this act shall be instituted by the commissioner of agriculture and shall be directed by him and all penalties and costs recovered from the violation of any provision of this act shall be paid into the state treasury, to be kept as a fund for the use of the commissioner of agriculture in the enforcement of this act and as an addition to the appropriation made in this act to be drawn from the treasury in the same manner as said appropriation. P. L. 1909 c. 34, § 2.

Agents or other parties excepting growers who wish to sell nursery stock shall make application for an agent's license and

shall file with the state entomologist the names and addresses of nurseries or parties from which they purchase their stock. On receipt of such application the state entomologist shall issue an agent's license valid for one year in such form and with such provisions as the commissioner of agriculture may prescribe. Such license may be revoked at any time for failure to report names and addresses of nurseries from which stock is purchased or for such other causes as may in the opinion of the commissioner of agriculture be deemed sufficient. Any violation of this requirement shall be fined not less than ten nor more than fifty dollars for each offense. For the purpose of this act the term nursery stock is hereby applied to all fruit and ornamental trees, shrubs and vines, and includes currant, gooseberry, blackberry and raspberry bushes, also strawberry plants. P. L. 1909 c. 34, § 3.

Should any person in the state suspect the presence of the brown-tail moth or San Jose scale preying upon trees, shrubs or vines in his possession or within his knowledge he shall forthwith notify the commissioner of agriculture to that effect; and it shall be the duty of said commissioner to cause the said trees, shrubs or vines to be inspected. If sufficient cause be found the commissioner of agriculture shall forthwith notify the municipal officers of the city or town where such pests have been found. Municipal officers thus notified shall immediately cause to be destroyed such of the above named insects in their different stages as may be found within the limits of the public streets and parks. Said limit to extend to the distance of sixty feet from the center of the public streets or highways and include all trees and shrubbery growing thereon. Should such municipal officers neglect or fail within a reasonable time to perform the duties herein imposed upon them, then the commissioner of agriculture shall order such city, town or plantation to proceed to destroy the above named insects in accordance with methods to be prescribed by him and to spend such an amount in the above named work as he shall deem necessary. If the amount thus expended during one full year shall exceed one-twentieth of one per cent of the tax valuation of said city or town, then the city or town shall be reimbursed according to section eleven. If any city, town or plantation shall fail to comply with the directions of said commissioner in the performance of said work and the expenditure of such money within the time specified by him, then the commissioner of agriculture shall cause the said work to be done and shall charge the actual expense of the same to said city or town;

such amount to be collected as a state tax and credited to this appropriation. Whenever a city, town or plantation is notified by the commissioner of agriculture of the presence of the brown-tail moth or San Jose scale, the mayor of each city, the selectmen of each town and the assessors of each plantation shall notify each owner of real estate located therein, requiring him to destroy the above named insects in his orchard and shade trees within a specified time. If the owner fails to destroy the above named insects before the specified time, then the city, town or plantation subject to the approval of the commissioner of agriculture, shall destroy them, and shall assess upon such aforesaid real estate the actual cost of so doing, to an amount, however, not exceeding one per cent of the assessed valuation of the above named property. The amount so assessed shall be collected in the form of a tax. If the expense incurred by the town in the performance of the above named duties shall exceed the last above named amount, the town shall be reimbursed by the commissioner of agriculture by an amount equal to this excess, providing the work has been done according to the provisions of this act. It shall be the duty of the commissioner of agriculture to disseminate information concerning the brown-tail and gypsy moths, San Jose scale and other injurious insects. Cities and towns may raise the sums necessary to carry out the provisions of this section in the same manner in which money is raised for other necessary municipal purposes. P. L. 1909 c. 34, § 4.

Any person who shall purposely resist or obstruct such commissioner or any person or persons under his employ, or any officer or agent of a city or town while engaged in the execution of the purposes of this act, shall be punished by a fine not exceeding twenty-five dollars for each offense. P. L. 1907 c. 15, § 10.

When any city or town shall have expended in any one calendar year, within its limits, its funds to an amount equal to one-twentieth of one per cent of its assessed valuation of the previous year in destroying or suppressing the brown-tail moth, San Jose scale and similar insects, but not including the gypsy moth, in any of their stages, as herein provided, it shall receive reimbursement from the state as follows :

Cities or towns having a total assessed valuation of seven hundred and fifty thousand dollars or less shall receive such sums as may in the judgment of the commissioner of agriculture have been necessarily expended by them in excess of one-twentieth of one per cent of such assessed valuation.

Cities and towns having a total assessed valuation of more than seven hundred and fifty thousand dollars and not exceeding one million five hundred thousand dollars assessed valuation, shall receive seventy-five per cent of such sum as may in the judgment of the commissioner of agriculture have been expended by them in excess of one-twentieth of one per cent of such valuation.

Cities or towns having a total assessed valuation of more than one million five hundred thousand dollars shall receive fifty per cent of such sums as may in the judgment of the commissioner of agriculture have been expended by them in excess of one-twentieth of one per cent of such valuation.

No city or town shall be entitled to reimbursement from the state as aforesaid until it shall have submitted, under oath, to the commissioner of agriculture its itemized, receipted accounts and vouchers showing the amounts expended by it in the process of destroying the above named pests according to the provisions of this act. This act applies only to the actual expenditure of funds for the extermination of the above named pests in the above named territory, namely, "within the limits of public streets and parks," and does not apply to the "bounty system" so called. P. L. 1909 c. 34, § 6.

In view of the possibility of spreading the gypsy moth by careless parties who do not understand the grave danger involved, the entire work of suppressing this pest in all its forms shall be done under the direct charge of the commissioner of agriculture and is so considered in this act. Whenever any city or town shall appropriate or raise a sum of money and shall pay the same over to the state treasury for the purpose of exterminating the gypsy moth within its borders, the commissioner of agriculture shall cause such amount to be expended in such city or town as herein provided, together with an equivalent amount from the appropriation hereafter made. *Provided, however*, if it be found by the commissioner of agriculture unnecessary or impracticable to expend such entire amount during the year following such payment to the state treasurer one-half the amount so remaining unexpended shall be reimbursed to such city or town. P. L. 1909, c. 34, § 7.

The sub-division of the department of agriculture under which the state entomologist performs the duties required to be done by him, by the provisions of this act, shall be known as the bureau of entomology. P. L. 1907 c. 15, § 14.

Trial justices and municipal courts are vested with the original jurisdiction, concurrent with the supreme and superior courts to try, and, upon conviction, to punish, for offenses against the provisions of this act. P. L. 1909 c. 34, § 8.

For the purpose of carrying into effect the provisions of this act there shall be appropriated the sum of thirty-five thousand dollars annually to be expended under the supervision of the commissioner of agriculture upon the presentation of properly approved bills for the same. Any part of this appropriation remaining unexpended at the end of any calendar year may be expended during the following year. P. L. 1909 c. 34, § 9.

Whereas, the gypsy and brown-tail moths have been declared by law to be public nuisances and their suppression and the prevention of their introduction into this state, and the protection of trees and shrubs from the introduction and ravages of dangerous insects and diseases, require constant work now being carried on under the direction of the commissioner of agriculture, and the interruption of said work until ninety days after the recess of this legislature would be harmful to the public health, and whereas, by reason of the foregoing facts this measure is immediately necessary for the preservation of the public health, and an emergency as contemplated by the constitution exists, now therefore be it enacted by the people of the State of Maine as follows:

For the purpose of carrying into effect all provisions of law now in force, or as the same may be amended and added to, relative to the protection of trees and shrubs from the introduction and ravages of dangerous insects and diseases, there is hereby appropriated out of any moneys in the treasury the sum of twenty-five thousand dollars annually for the years nineteen hundred and nine and nineteen hundred and ten. Any part of this appropriation remaining unexpended at the end of any calendar year may be expended under the supervision of the commissioner of agriculture, upon presentation of properly approved bills for the same. This act, two-thirds of all the members elected to each house having so directed, shall take effect when approved by the governor. P. L. 1909 c. 108.

CHAPTER CXV.

FISH AND GAME LAWS.

The statutes pertaining to fish and game are frequently amended. For this reason it is deemed best to omit same from this book. The laws may be obtained from the chairman of the Commission on Inland Fisheries and Game, Augusta, Maine.

CHAPTER CXVI.

PEOPLE'S VETO—REFERENDUM—DIRECT INITIATIVE.

Part first of article four of the Constitution of Maine is hereby amended as follows, namely :

By striking out all of section one after the word "Maine" in the third line thereof, and inserting in lieu thereof the following words, "but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be 'Be it enacted by the people of the State of Maine,' " so that that said section as amended, shall read as follows, namely :

The legislative power shall be vested in two distinct branches, a house of representatives and a senate, each to have a negative on the other, and both to be styled the legislature of Maine, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style

of their laws and acts shall be, "Be it enacted by the people of the State of Maine."

Part third of article four is hereby amended as follows, namely :

By inserting in section one, after the words "biennially and" in the second line thereof, the words "with the exceptions hereinafter stated," so that said section shall read as amended :

The legislature shall convene on the first Wednesday of January, biennially, and, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution nor to that of the United States.

Part third of article four is further amended by adding to said article the following sections to be numbered from sixteen to twenty-two inclusive, namely :

SECTION 16. No act or joint resolution of the legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the legislature passing it, unless in case of emergency, (which with the facts constituting the emergency shall be expressed in the preamble of the act), the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.

SEC. 17. Upon the written petition of not less than ten thousand electors, addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, requesting that one or more acts, bills, resolves or resolutions, or part or parts thereof, passed by the legislature, but not then in effect by reason of the provisions of the preceding section be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof, as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have

been ratified by a majority of the electors voting thereon at a general or special election. As soon as it appears that the effect of any act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in case of no general election within six months thereafter the governor may, and if so requested in said written petition therefor, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof.

SEC. 18. The electors may propose to the legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the state constitution, by written petition addressed to the legislature or to either branch thereof and filed in the office of the secretary of state or presented to either branch of the legislature at least thirty days before the close of its session. Any measure thus proposed by not less than twelve thousand electors, unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by itself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The legislature may order a special election on any measure that is subject to a vote of the people. The governor may, and if so requested in the written petition addressed to the legislature, shall, by proclamation, order any measure proposed to the legislature by at least twelve thousand electors as herein provided, and not enacted by the legislature without change, referred to the people at a special election to be held not less than four nor more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty

days after the recess of the legislature, to which such measure was proposed.

SEC. 19. Any measure referred to the people and approved by a majority of the votes given thereon shall, unless a later date is specified in said measure, take effect and become a law in thirty days after the governor has made public proclamation of the result of the vote on said measure, which he shall do within ten days after the vote thereon has been canvassed and determined. The veto power of the governor shall not extend to any measure approved by vote of the people, and any measure initiated by the people and passed by the legislature without change, if vetoed by the governor and if his veto is sustained by the legislature shall be referred to the people to be voted on at the next general election. The legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote.

SEC. 20. As used in either of the three preceding sections the words "electors" and "people" mean the electors of the state qualified to vote for governor; "recess of the legislature" means the adjournment without day of a session of the legislature; "general election" means the November election for choice of presidential electors or the September election for choice of governor and other state and county officers; "measure" means an act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor. The petitions shall set forth the full text of the measure requested or proposed. The full text of a measure submitted to a vote of the people under the provisions of the constitution need not be printed on the official ballots, but, until otherwise provided by the legislature, the secretary of state shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

SEC. 21. The city council of any city may establish the initiative and referendum for the electors of such city in regard to its municipal affairs, provided that the ordinance establishing and providing the method of exercising such initiative and refer-

endum shall not take effect until ratified by vote of a majority of the electors of said city, voting thereon at a municipal election. *Provided, however,* that the legislature may at any time provide a uniform method for the exercise of the initiative and referendum in municipal affairs.

SEC. 22. Until the legislature shall enact further regulations not inconsistent with the constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding section self executing.

(NOTE: Resolution adopted by legislature March twentieth, nineteen hundred and seven. Resolution, c. 121. Adopted September fourteenth, nineteen hundred and eight.)

CHAPTER CXVII.

UNITED STATES BANKRUPTCY LAW.

The following are extracts from the Bankruptcy Law, as amended. For additional provisions see Act of Congress, approved 1898.

SECTION 3. ACTS OF BANKRUPTCY.—*a* Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States; or (5) admitted in writing

his inability to pay his debts, and his willingness to be adjudged a bankrupt on that ground.

b A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

c It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

d Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

e Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her per-

sonal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

SEC. 4. WHO MAY BECOME BANKRUPTS.—*a* Any person, except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

b Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a state or territory or of the United States.

SEC. 5. PARTNERS.—*a* A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

b The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

c The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

d The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

e The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

f The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net pro-

ceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

g The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

h In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

SEC. 6. EXEMPTION OF BANKRUPTS.—*a* This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

SEC. 7. DUTIES OF BANKRUPTS.—*a* The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary

bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding. *Provided, however,* that he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

SEC. 8. DEATH OR INSANITY OF BANKRUPTS.—*a* The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided,* that in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the state of the bankrupt's residence.

SEC. 9. PROTECTION AND DETENTION OF BANKRUPTS.—*a* A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a state court having jurisdiction, and served within such state, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.

b The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after

the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof, that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

SEC. 10. EXTRADITION OF BANKRUPTS.—*a* Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

SEC. 11. SUITS BY AND AGAINST BANKRUPTS.—*a* A suit which is founded upon a claim from which a discharge would be release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

b The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

c A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

d Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

SEC. 12. COMPOSITIONS, WHEN CONFIRMED.—*a* A bankrupt may offer, either before or after adjudication, terms of

composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and the list of his creditors required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examination of the bankrupt, and preservation or conduct of estates, at which meeting the judge or referee shall preside; and action upon the petition for adjudication shall be delayed until it shall be determined whether such composition shall be confirmed.

b An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

c A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

d The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

e Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

SEC. 13. COMPOSITIONS, WHEN SET ASIDE.—*a* The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

SEC. 14. DISCHARGES, WHEN GRANTED.—*a* Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

b The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustee or other parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of, or to answer any material question approved by the court: *Provided*, That a trustee shall not interpose objections to a bankrupt's discharge until he shall be authorized so to do at a meeting of creditors called for that purpose.

c The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

SEC. 15. DISCHARGES, WHEN REVOKED.—*a* The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has

come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

SEC. 16. CO-DEBTORS OF BANKRUPTS.—*a* The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

SEC. 17. DEBTS NOT AFFECTED BY A DISCHARGE.—*a* A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the state, county, district, or municipality in which he resides; (2) are liabilities for obtaining property by false pretences or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

SEC. 55. MEETINGS OF CREDITORS.—*a* The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

b At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

c The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

d A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

e The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

f Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

SEC. 56. VOTERS AT MEETINGS OF CREDITORS.—*a* Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

b Creditors holding claims which are secured or have priority shall not, in respect of such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

SEC. 57. PROOF AND ALLOWANCE OF CLAIMS.—*a* Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

b Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

c Claims after being proved may, for the purpose of allow-

ance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

d Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

e Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

f Objections to claims shall be heard and determined as soon as the convenience of the court and the best interest of the estates and the claimants will permit.

g The claims of creditors who have received preferences, avoidable under section sixty, subdivision *b*, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section sixty-seven, subdivision *e*, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments, or incumbrances.

h The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

i Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

j Debts owing to the United States, a state, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

k Claims which have been allowed may be reconsidered for cause and reallocated or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

l Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

m The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

n Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, that the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

SEC. 58. NOTICES TO CREDITORS.—*a* Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy; (8) the proposed dismissal of the proceedings, and (9) there shall be thirty days' notice of all applications for the discharge of bankrupts.

b Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

c All notices shall be given by the referee, unless otherwise ordered by the judge.

SEC. 59. WHO MAY FILE AND DISMISS PETITIONS.—*a* Any qualified person may file a petition to be adjudged a voluntary bankrupt.

b Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

c Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

d If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

e In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition shall not be counted.

f Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

g A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors, and to that end the court shall, before entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of such application, and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest opportunity to be heard.

SEC. 60. PREFERRED CREDITORS.—*a* A person shall be

deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

b If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

c If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

d If the debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

CHAPTER CXVIII.

RULES OF THE PROBATE COURTS.

I.

Any party may appear in the probate court, in person or by an attorney authorized to practice in the courts of this state, or by a person authorized by writing, filed in said court for that purpose. A person so appearing for another or the party himself shall file with the register a writing giving his name, residence, the matter in which, and the name of the person or persons for whom he appears, and such writing shall be entered on the docket, or the appearance of such person or party may be endorsed on the back of the petition or other paper in the matter upon which he desires to be heard.

II.

If a party shall change his attorney pending any proceeding, the name of the new attorney shall be substituted on the docket for that of the former attorney and notice thereof given to the adverse party; and until such notice or change, all notices given to or by the attorney first appointed shall be considered in all respects as notice to or from his client, except in cases in which by law a notice is required to be given to the party personally; *provided, however*, that nothing in these rules shall be construed to prevent any party interested from appearing for himself, in the manner provided by law, and in such case the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

III.

When the authority of an attorney at law to appear for any party shall be demanded, if the attorney shall declare that he has been duly authorized to appear by an application made directly to him by such party or by some person whom he believes to have been authorized to employ him, such declaration shall be deemed and taken to be evidence of authority to appear, and prosecute or defend in any proceeding in said court.

IV.

Petitions and other matters upon which notice has been ordered will not be acted upon until after the return hour, which is usually ten o'clock A. M.

V.

Approved blanks will be furnished by the register, and must be used in all proceedings to which they are applicable.

VI.

Notice will not be ordered on any petition, report or account, unless actually filed in court.

VII.

The names of attorneys presenting petitions and accounts should be endorsed thereon to secure the prompt issuing of notices, etc., and facilitate the business of the court.

VIII.

Petitions to sell real estate or personal property, or for allowances to widows or minor children will not be granted, unless the inventory in that estate has been duly filed in court.

IX.

Petitions to sell real estate for the payment of debts, etc., except where the amount has been ascertained by the settlement of an account or the report of commissioners of insolvency must be accompanied with a list, under oath, of the debts (and legacies, if any,) due from the estate, and the amount of the expense of administration up to the time of the application.

X.

Representations of insolvency should be accompanied with a statement, under oath, of the amount so far as can be ascertained, of the debts due from the estate, and of the amount of the real and personal property.

XI.

The court may require the appointment of a guardian for minors in cases in which they are interested, before an account is settled, an allowance made to the widow, or license granted to sell real estate.

XII.

Accounts presented for order of notice, or examination, should be fully stated before they are presented.

XIII.

Whenever it shall appear that a minor is interested in any matter pending, a guardian ad litem for such minor may be appointed by the court with or without notice.

XIV.

The court may refuse to hear any cause or matter, or allow any account until the fees and charges of the register shall be paid.

XV.

When a surety company is offered as surety on probate bonds, a statement of the charge therefor must be filed in court.

XVI.

The signature of principals and sureties to all probate bonds should be witnessed.

XVII.

Sureties on the bonds of administrators, executors, guardians or trustees, will not be appointed appraisers or commissioners on the same estate, nor will any person who is related to the administrator, executor, guardian, trustee or heirs at law within the sixth degree be appointed to either of said trusts. Christian names and residences of principals and sureties on bonds and of appraisers and commissioners should be fully stated.

XVIII.

Any petition addressed to the court may be amended in matter of form under the direction of the court, when the rights of parties will not be affected.

XIX.

In all cases where license is granted to sell real estate a copy of the description contained in the petition shall be inserted therein; or the license shall show that the real estate to be sold is the same described in the petition upon which it was issued, and in the latter case a certified copy of said description shall accompany the license.

XX.

All official communications relating to cases and business in court should be addressed to the register of probate to avoid delay.

XXI.

Parties not familiar with the proceedings in the probate court are expected to secure assistance of competent counsellors.

Neither the judge nor register can advise in matters coming before the court.

XXII.

No person entitled by law to administer an estate shall be appointed within thirty days after the death of the decedent without consent of all other persons so entitled who are resident in this state.

XXIII.

The judges of probate may order notices on all petitions and other matters presented to their several courts.

XXIV.

Letters testamentary or of administration with the will annexed and bonds in cases of nuncupative or lost wills are to follow the general form of letters testamentary and of administrations with the will annexed and bonds prescribed in other cases of testate estates.

XXV.

All depositions shall be opened and filed by the register at the term for which they were taken ; and if the matters in which they are to be used shall be continued such depositions shall remain on file and be open to all objections when offered at the trial or hearing as at the return term, and all depositions shall remain on file at least fourteen days; the party producing a deposition may then withdraw it by leave of court, in which case it shall not be used by either party.

XXVI.

When written evidence is in the hands of an adverse party no evidence of its contents shall be admitted unless previous notice to produce it on trial or hearing, shall have been given to such adverse party, or his attorney, and comments by counsel upon a refusal to produce it will not be allowed without first proving such notice.

XXVII.

In cases of contested wills and accounts, on motion of the proponent or accountant, the party objecting may be required to file specifications of the grounds of the objection before the day of hearing, but amendments thereto may be filed by leave of the court, upon such terms as may be deemed reasonable, but not without granting a continuance, if requested by the proponent or accountant, and in such cases the hearing shall be confined to the grounds of objection specified.

XXVIII.

In cases of license to sell real estate at private sale or to exchange real estate, a certificate, under oath, of such sale or exchange should be filed within thirty days, showing the amount received or the real estate taken in exchange, and the person to whom sold or with whom exchanged.

CHAPTER CXIX.

ADMINISTRATION.

Upon the death of any person intestate, the judge of probate having jurisdiction shall grant administration of such intestates' goods or estate to the widow, husband, next of kin, or husband of the daughter of the deceased, or to two or more of them, as he thinks fit, if the applicants are more than twenty-one years old and are in other respects qualified for the trust, but if unsuitable, or being residents in the county, they after due notice neglect or refuse for thirty days from the death of the intestate to take out letters of administration, he may commit administration on such estate to such person as he deems suitable. R. S. c. 66, § 18.

No administration shall be granted on the estate of any intestate deceased person, unless it appears to the judge that he left personal estate to the amount of at least twenty dollars, or owed debts to that amount, and left real estate of that value; and when no administration is granted for want of such estate, the personal property of the deceased becomes the property of the

widow, or, if none, of the next of kin, who are not, in such case, chargeable as executors in their own wrong. After twenty years from the death of any person, no probate of his last will, or administration on his estate shall be originally granted except as provided in the following section, unless it appears that there are moneys due to said estate from the State of Maine or the United States; but this does not apply to foreign wills previously proved and allowed in another state or country. R. S. c. 66, § 1.

When administration has not been taken on the estate of an intestate within twenty years after the death of such intestate, and thereafter any property of at least twenty dollars in value, accrues to said estate, or belonging thereto, first comes to the knowledge of any person interested in said estate, original administration may be granted on such property, at any time within two years next after it so accrued or first became known, but such administration shall affect no other property and shall not revive debts due to or by said intestate. R. S. c. 66, § 2.

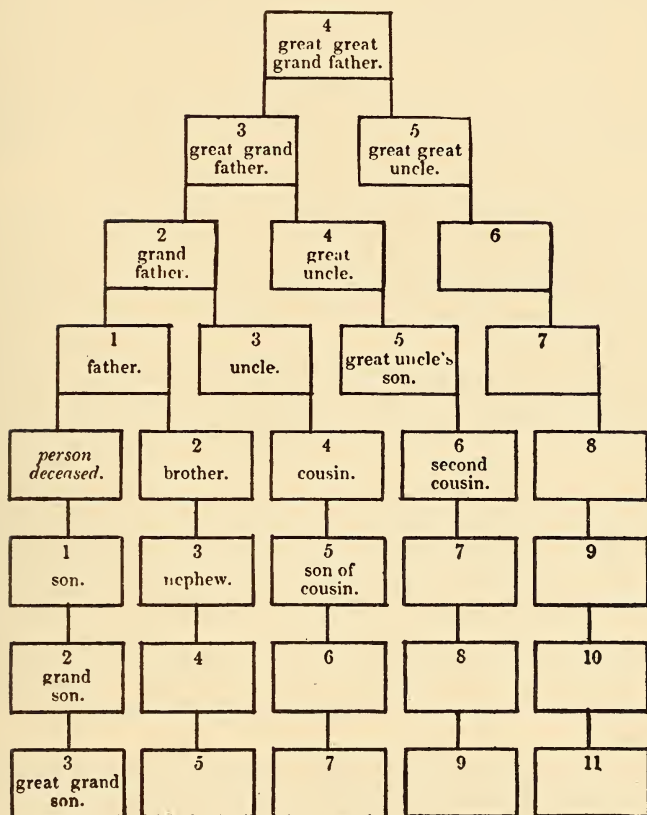
No will is effectual to pass real or personal estate, unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution. R. S. c. 76, § 15.

Whoever willfully suppresses, secretes, defaces or destroys any last will and testament of a deceased person, in his possession or under his control, with intent to injure or defraud any person interested therein shall be punished by fine not exceeding one thousand dollars, and imprisonment for less than one year. R. S. c. 127, § 13.

Whoever has the custody of a will, shall, after the testator's death, deliver it into the probate court having jurisdiction thereof, or to the executor therein named; and any executor, having such will in his custody, shall file it in such court. If such executor or other person, having been duly cited for that purpose, neglects so to do, without reasonable cause, for thirty days after notice of the testator's death, he may be committed to jail by the judge's warrant, there to be kept in close custody, until he so delivers the will, or is released by the judge or otherwise by order of law; and he is also liable to any party for the damage which he has sustained by such neglect. R. S. c. 66, § 4.

The mode of ascertaining the degree of kindred between persons related to each other, is, by counting backward from one of the parties to the common ancestor, thence downward to the other, as may be seen by the following table of consanguinity.

TABLE OF CONSANGUINITY.

**Form of Will.**

Be it remembered that I, —, of —, in the county of —, in the state of —, being of sound and disposing mind and memory, but mindful of the uncertainty of this life, do make, publish and declare this my last will and testament, hereby revoking all former wills by me made.

After the payment of my just debts, funeral charges and expenses of administration, I dispose of my estate, as follows :

First. I give and bequeath to my beloved wife Sarah J. —, all my household furniture, one black mare, one phaeton and my best harness, and the sum of — dollars.

Second. I give and bequeath to my son John H. —, the sum of — dollars.

Third. I give and bequeath to my daughter Jane L. —, the sum of — dollars.

Fourth. I give and devise the house and lot appertaining thereto, situated in —, to my daughter Amelia T. —.

Fifth. I give and bequeath to my son William F. —, the sum of one dollar.

Sixth. I give, devise and bequeath, all the rest, residue and remainder of my estate, real, personal and mixed, wherever found and however situated, to my said beloved wife Sarah J. —, and I hereby appoint my said son John H. —, sole executor of this my last will and testament.

[If desired add—and I request that the said John H. — shall not be required to give bond.]

In testimony whereof, I hereunto set my hand and seal, and declare this to be my last will and testament, this — day of —, in the year one thousand nine hundred and —.

———. [Seal.]

Signed, sealed, published and declared by the above named — as and for h last will and testament in the presence of us who, at h request, in h presence, and in the presence of each other, hereto subscribe our names as witnesses thereto, on this — day of —, A. D. 19—.

No person under the age of twenty-one years (except a married woman) or of unsound mind can make a will. A will does not require any seal. No person who is to receive anything under a will, and no husband or wife of any such person, should be a witness to such will. But a person is not rendered incompetent as witness to a will by the fact that he is named therein as executor. If the testator is unable to sign the will, his signature may be written for him by some other person "at his request and in his presence."

The words "give and bequeath" should be used to designate personal estate, "give and devise" for real estate and "give, devise and bequeath" for personal and real estate together.

A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate, which he would have taken if no will had been made, unless it appears that such omission was intentional, or was not occasioned by mistake, or that such child, or issue had a due proportion of the estate during the life of the testator. R. S. c. 76, § 9.

Intention to omit may be shown by parol evidence. 80 Me. 299.

If intention is to disinherit such child or issue it is advisable to make a bequest to him of one dollar or other small sum of money or to state in the will that such son or issue is intentionally omitted.

When a relative of the testator, having a devise of real or personal estate, dies before the testator, leaving lineal descendants, they take such estate as would have been taken by such deceased relative if he had survived. R. S. c. 76, § 10.

Husband not relative of wife. 80 Me. 290.

Mother not lineal descendant of son. 82 Me. 230.

Relative means one connected by blood not by marriage. 83 Me. 197.

Form of Devise to a Wife in Lieu of Her Right by Descent.

Also, I devise to my wife, R. B., the house in which I now live, and the building appurtenant to the same, and the following described tract of land, etc. To have and to hold to her, the said R. B., for the term of her natural life, in lieu and in full satisfaction of her right and interest by descent in and out of all the lands and tenements whereof I shall die seized [*or of all her right and interest by descent in any and all lands and tenements whereof I now am, and have been, or hereafter shall be seized, during my marriage to my said wife*].

Form of a Codicil.

I, A. B., of —, do make, publish, and declare this writing to be a codicil to my last will and testament to be annexed to and taken and allowed as a part thereof. I give to my niece, M. E., one gold watch. I give to my nephew, I. G., the two shares of Cumberland Bank stock which are owned by me.

In testimony whereof, I hereunto set my hand and seal, and declare this to be a codicil to my last will and testament this — day of —, in the year one thousand nine hundred and —.

A. B.

Signed, sealed, published and declared by the above named A. B., as a codicil to be annexed to his last will and testament, in presence of us, who, at his request, in his presence and in the presence of each other, hereto subscribe our names as witness thereto on this — day of —, A. D. 19—.

R. S.

W. T.

Y. H.

Form of a Nuncupative Will.

The last will and testament of —, in the county of — deceased, declared by him by word of mouth, in the time of the last sickness of the deceased, and in his usual dwelling [*or at the dwelling of A. B., in C., where he was suddenly taken sick from home and died before returning, as the case may be*] on the — day of —, in the presence of us, who at the time of pronouncing the same, were requested by the testator to bear witness that such was his will, and who have subscribed our names as witness thereto. My will is, that — [*here insert the very words*].

In witness whereof, we have hereunto set our hands, the — day of —,
A. D. 19—.

A. B.
C. D.
E. F.

An administrator or executor should protect all the interests of the estate he represents. If the estate is solvent, he is the agent or trustee of the heirs; if insolvent, of the creditors as well. Negligence and delay in settling estates prove detrimental to the interest of the heirs and creditors.

1. He should therefore cause the inventory to be immediately taken.

2. He should cause the widow's allowance of personal estate to be obtained.

3. He should (if the heirs do not take the personal estate at the appraised value) obtain a license to sell it, and sell the same to the best advantage.

4. He should be vigilant in collecting all debts due the estate, and in ascertaining all debts against the estate.

5. If the estate is solvent he should pay all debts so soon as he has funds. All pecuniary legacies are payable in one year after the death of the testator, unless otherwise provided in the will. Interest is to be allowed from the time the legacy becomes payable.

6. If the estate is insolvent, he should apply for license to sell the real estate, file a petition, and obtain an order of notice. At this time he must exhibit an accurate list of all the outstanding debts, and an estimate of all the expenses of administration, and the amount of all the available funds due the estate.

7. If the estate is insolvent, the administrator should apply for a commission of insolvency, and procure license to sell all the real estate. He must see that the report of the commissioners is completed and duly returned, and that the order of notice is taken out and published.

Administrator and executor should be cautious in paying legacies or turning property over to the heirs before the exact condition of the estate is known, as frequently debts and claims against the estate are presented, of which the heirs have no information, and unless the administrator has protected himself by taking a bond from the persons to whom he so pays, or by protecting himself in some other way, he may be subjected to personal loss through the inability of such persons to refund the sums received.

APPENDIX.

MISCELLANEOUS FORMS.

CO-PARTNERSHIP.

Form of Agreement of Co-partnership.

A. B., of —, and C. D., of —, agree as follows: The parties agree to become partners for the purpose of buying and selling such goods as are usually kept for sale or purchased at a retail store, in the town of —, for five years from this date under the firm name of —.

Said parties have each contributed one thousand dollars as the capital stock of said firm. [*Or as the case may be.*]

All profits shall be equally divided; and all expenses of the business, and all losses, shall be equally borne in common.

Both parties shall give all their time and attention to the business of said firm for the common benefit; and neither party shall engage in any trade or business for his private advantage.

Correct books of account shall be kept, which shall always be open to the inspection of both parties, or their legal representatives, in which shall be regularly entered all moneys received and paid, and all purchases, sales, transactions, and accounts relating to the business of said firm.

An account of stock shall be taken and the accounts between the said partners shall be settled as often as once in every year, and oftener if requested in writing by either party.

Neither of the said parties shall become surety for any person, or bind the firm for surety, in any case, without the written consent of the other.

No money or other property shall be withdrawn by either party, or applied to his own use, except with the written consent of the other party; and in every such case the same shall be charged, and his share of profits reduced in proportion to the amount withdrawn [*or each partner may draw the sum of — dollars every month, in money or in goods at cost*].

At the close of the partnership, the stock, property, and debts shall be equally divided, after paying the debts and liabilities of the firm.

Witness our hands and seals this — day of —, A. D. 19—.

Signed, sealed and delivered
in the presence of —.

A. B. [Seal.]

C. D. [Seal.]

Form of Agreement to Continue a Partnership to Be Written, upon the Original Agreement of Co-partnership.

We, the within-named A. B. and C. D., do, by these presents, declare and mutually covenant and agree unto and with each other, his and their executors, administrators, and assigns, to continue the joint trade and partnership within mentioned for the further term of — years, from the — day of —, 19—, with all the provisions and restrictions herein contained.

In witness whereof we have hereunto set our hands and seals this — day of —, A. D. 19—.

Signed, sealed and witnessed

in the presence of —.

Form of a Dissolution of Co-partnership.

A. B., of —, and C. D., of —, agree as follows: The partnership existing between said parties, under the firm name of —, is dissolved. Said A. B., in consideration of — dollars paid to him by said C. D., grants and assigns to said C. D., all his interest and right in all the goods and stock of said firm, and in all the debts and demands due said firm, with full power to the said C. D. to collect them by suit or otherwise in the name of said A. B. and for his own use.

Said A. B. agrees that he will not do any act by which said C. D. may be delayed or hindered from collecting any of said debts or demands; and that he will, on request, execute any proper instrument for enabling said C. D. to collect the same.

Said C. D. agrees to pay all debts and demands existing against said firm, and to indemnify and save harmless the said A. B. from any loss, cost, damage or expense to which he may be subject by reason of the same.

Witness our hands and seals, the — day of —, 19—.

Signed, sealed and delivered

in the presence of —.

A. B. [Seal.]

C. D. [Seal.]

Form of Notice on Dissolution of Co-partnership.

Notice is hereby given that the partnership lately subsisting between A. B. and C. D., both of —, under the firm name of —, expired on — [*or was dissolved on —, by mutual consent*]. All debts due the said partnership are to be paid to said A. B., and all demands against the said partnership are to be presented to him for payment [*or A. B. is authorized to settle all debts due to and by the said company*].

Form of Notice Where Only One Partner Leaves the Firm.

Notice is hereby given that E. F. has this day withdrawn from the partnership heretofore existing between A. B., C. D. and the said E. F. under the firm name of —. All debts due the said partnership are to be paid, and all accounts against the same will be discharged, at the place of busi-

ness of the late firm in —, where the business will be continued by the said A. B. and C. D. under the firm name of B. and D.

Dated at —, this — day of —, 19—.

(NOTE: It is proper to publish a notice immediately after a dissolution of a partnership, for the information of the public at large, and to send a special notice to all persons who had dealings with the company.)

Form of Limited Partnership in Maine.

Persons forming such partnership, shall sign a certificate as follows:

Notice is hereby given that the subscribers have formed a partnership under the firm name of W. & R.; that G. W., of —, and C. R., of —, are general partners, and T. A., of —, is special partner. The business to be conducted by said firm in the city of — is a general commission and forwarding business, and the said special partner has contributed to the common stock of said partnership the sum of — dollars.

Said partnership commences on — and is to terminate on —.

Dated at —, this — day of —, 19—.

G. W.

C. R.

T. A.

(NOTE: The above certificate must be acknowledged by all the parties, and recorded in the registry of deeds of each county where such partnership is to have an established place of business and after such registry, published in a newspaper printed in the county where the principal place of business is.)

Form of Administrator's Deed.

Know all men by these presents, that I, A. B., of —, in the county of —, in the state of —, administrator of the estate of C. D., late of —, deceased, intestate, having obtained a license from the judge of the probate court in and for the county of —, at a term of said court begun and holden at —, in and for said county, on the — day of —, A. D. 19—, to sell and convey so much of the real estate of said deceased as will produce the sum of — dollars [*or the whole of the real estate of said deceased, because the residue would be greatly depreciated by a sale of any portion thereof*], and having given public notice of the intended sale, by causing an advertisement thereof to be published three weeks successively in the — newspaper, published at —, in said county, agreeably to the order of said court, the first publication whereof was thirty days, at least, before the said sale, and having given the bond required by law before fixing upon the time and place of such sale, did on the — day of —, A. D. 19—, pursuant to the license and notice aforesaid, sell at public auction, the real estate of the said C. D., hereinafter described, to E. F., of —, etc., for the sum of —

dollars, he being the highest bidder therefor. Now, therefore, I, the said A. B., by virtue of the power and authority in me vested as aforesaid, and in consideration of the said sum of — dollars, to me paid by the said E. F., the receipt whereof is hereby acknowledged, do hereby sell, and convey to said E. F., his heirs and assigns, the following described lot or parcel of land [*insert a description of the land*], to have and to hold the aforegranted and bargained premises with all privileges and appurtenances thereof to him, the said E. F., and his heirs and assigns forever. And I, the said A. B., in my capacity of administrator as aforesaid, do hereby covenant with the said E. F., his heirs and assigns, that I am the legal administrator of said estate; that I have conformed to all the requirements of law in obtaining license, giving bond and making sale as aforesaid; and that I have good right and lawful authority to sell and convey said real estate as aforesaid.

In witness whereof, I, A. B., in my said capacity of administrator as aforesaid have hereunto set my hand and seal this — day of —, 19—.

Signed, sealed and delivered

in presence of —.

A. B., *Administrator of* —. [Seal.]

STATE OF MAINE.

—, ss.

[Date.]

Personally appeared the above named — and acknowledged the foregoing instrument to be his free act and deed.

Before me,

—, *Justice of the Peace.*

(NOTE: Administrators should preserve all the evidence of having advertised and sold the estate.)

Form of Deed by Guardian of Minors.

Know all men by these presents, that I, A. B., of —, guardian of C. D. and E. F., minor children of G., having obtained a license from the judge of the probate court in and for the county of —, at a term of said court holden at —, in and for said county, on the — day of —, A. D. 19—, to sell and convey the real estate of said minors and having given public notice of such intended sale, by causing an advertisement thereof to be published three weeks successively, the first publication being thirty days at least before said sale, in the — newspaper, published in —, in said county, pursuant to the order of said court; and having given the bond required by law before fixing the time and place of such sale, did, on the — day of —, A. D. 19—, by authority of and pursuant to the license and notice aforesaid, sell at public auction the real estate hereinafter described, to L. W., of —, for the sum of — dollars, he being the highest bidder therefor.

Now therefore I, the said A. B., by virtue of the power and authority in me vested as aforesaid, and in consideration of the said sum of — dollars

paid by the said L. W., the receipt whereof is hereby acknowledged, do hereby sell and convey unto the said L. W., his heirs and assigns, the following described lot or parcel of land, viz: [*give description of the land*]. [*The remainder same as deed of administrator, proper changes being made.*]

DEPOSITIONS.

Form of Summons to Deponent.

_____, ss.

To C. D., of _____, in the county of _____,

GREETING.

Whereas, A. B., of _____, in the county of _____, has requested that your deposition be taken, to be used in an action now pending between him and E. F., of _____, in the county of _____, and the _____, of _____, in the town of _____, and the _____ day of _____, A. D. 19—, at _____ of the clock in the _____ noon, are the place and time appointed therefor; you are therefore required, in the name of the State of Maine, then and there to appear, to testify what you know relating to said action.

Dated this _____ day of _____, A. D. 19—.

G. H., *Justice of the Peace.*

Form of Citation to the Adverse Party.

_____, ss.

To _____, of _____, in the county of _____,

GREETING.

Whereas, A. B., of _____, has requested that the deposition of C. D., of _____, may be taken to be used in an action of _____, pending between you and the said A. B., and the _____ of _____, in _____, and the _____ day of _____, A. D. 19—, at _____ of the clock in the _____ noon, are the place and time appointed therefor; you are hereby notified to be present and put such questions as you think fit.

Dated this _____ day of _____, A. D. 19—.

E. F., *Justice of the Peace.*

Form of a Caption of a Deposition.

STATE OF MAINE.

County of _____, ss.

On this _____ day of _____, A. D. 19—, the within named deponent personally appearing before me, at _____, in said county, was first sworn by me, according to law, to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which his written deposition was to be taken; and then being examined on interrogatories, according to law, gave on oath the within deposition, which was written by _____, a disinterested person, in the presence and under the direction of myself; and after the same deposition had been carefully read _____ said deponent, it was then subscribed by him in my presence.

Said deposition was taken at the request of the —, the adverse party was notified to attend and did — attend its taking; the cause in which it is to be used is an action of — in which — plaintiff, and — defendant, which is now pending in the — court, within and for the county of —, in said state, and is to be tried in said court, at its term to be holden at —, within and for said county of —, on the — day of —, A. D. 19—.

The cause of taking said deposition is —, and the fees for it as below stated.

Witness my hand and seal at said —, the day and year first above named.

Fees.—Magistrate's, \$——

Deponent's, ——

For service of Notifications, ——

G. H., *Justice of the Peace.*

The law requires that the deponent must be sworn before giving his deposition.

When any person wishes to perpetuate the testimony of a witness, he shall make a statement in writing under oath, briefly setting forth in substance his title, interest or claim in the subject to which the desired testimony relates, the names of all persons supposed to be interested therein, and the name of each witness proposed to be examined; and shall deliver the statement to a judge or register of probate, notary public, clerk of the supreme judicial court, or justice of the peace, requesting him to take the deposition of such witness; and he shall thereupon cause notice to be given, of the time and place for taking such deposition, to all persons so named in the statement, which may be given and proved as in case of other depositions. R. S. c. 109, § 22.

The deponent shall be sworn and examined, and the deposition written, read and subscribed, as other depositions; and the person taking it shall annex to it a like certificate, as nearly as the case will admit, and also state therein that it was taken in perpetual remembrance of the thing, and the name of the person at whose request it was taken, and of all who were notified, and all who attended. R. S. c. 109, § 23.

The statement, deposition and certificate, shall within ninety days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or some of them reside. R. S. c. 109, § 24.

Form of Statement.

To A. B., justice of the peace and quorum in the county of —, in the State of Maine:

C. D., of —, in the county of —, in said state, respectfully makes the following statement, to wit: [*here set forth, in substance, his title, interest, or claim, in or to the subject to which the desired testimony relates, and the names of all persons who are supposed to be interested therein; and also the name of each witness proper to be examined*]; wherefore he prays that notice shall be given to said —, —, —, persons named as aforesaid, that the depositions of said —, —, —, may be taken before you, in relation to the premises, to be preserved in perpetual remembrance.

C. D.

—, ss.

—, A. D. 19—.

Personally appeared C. D., and made oath that the foregoing statement by him subscribed is true.

Before me,

J. K., *Justice of the Peace.*

Form of Notice.

—, ss.

To —, of —, in the county of —,

GREETING.

You are hereby notified that the deposition of — will be taken before A. B., justice of the peace and quorum [*or a notary public*], in the county of —, relative to [*here state the matter to which the deposition relates*]; to be preserved in perpetual remembrance of the thing —; and the office of —, in —, and the — day of —, at — o'clock in the — noon, are appointed as the time and place for said deponent to testify what he knows relating to said matter.

Given under my hand and seal, this — day of —, A. D. 19—.

A. B., *Justice of the Peace and Quorum.*

(NOTE: There should be a return and affidavit of service of notice.)

Form of Certificate Annexed to Deposition.

—, ss.

—, A. D. 19—.

I certify that the annexed deposition was taken by me, A. B., justice of the peace and quorum in said county of —, at my office in —, in said county, on the — day of —, 19—, at — o'clock in the — noon, at the request of —, to be preserved in perpetual remembrance. And I duly notified —, —, who were present [*or not, as the case may be*]. Said deposition was reduced to writing by me, was read to and subscribed by the deponent in my presence, the said deponent having first made oath that he would testify to the truth, the whole truth, and nothing but the truth, relative to the matters for which his said deposition was to be taken.

A. B., *Justice of the Peace and Quorum.*

Form of Demand Annexed to Submission to Referees.

A. B., of —, demands against C. D., of —, the sum of forty-five dollars, being the price of one yoke of oxen, sold and delivered by said A. B. to said C. D. [*or the amount of the account hereto annexed*].

Form of Notice by Chairman of Referees.

To A. B., of —:

I have appointed the — day of —, at — o'clock in the —noon, at the office of —, in —, county of —, as the time and place for hearing the parties in the case submitted to us by C. D. and yourself.

Dated, —.

E. T.

Form of Arbitration Bond.

Know all men by these presents, that I, A. B., of —, as principal, and E. F. and G. H., of —, as sureties, are held and firmly bound to C. D., of —, in the sum of — dollars, to be paid to said C. D., to which payment we bind ourselves and our heirs, administrators and executors firmly by these presents.

Sealed with our seals this — day of —, 19—.

The condition of this obligation is, that if said A. B. shall perform the award of —, referees mutually chosen to adjudge and determine concerning all demands existing between the parties, so far as said award is made in writing, then this obligation shall be void; otherwise to remain in full force.

A. B. [Seal.]

E. F. [Seal.]

G. H. [Seal.]

Form of Award.

The referees named in the annexed agreement, having given to the parties due notice of the time and place of hearing, and having heard, examined, and considered the allegations, evidence, and witnesses of both parties, do award that the said A. B. recover of the said C. D. the sum of — dollars, and cost of reference, taxed at — dollars.

E. F., }
L. M., } *Referees.*
J. R., }

Form of Bill of Sale.

Know all men by these presents, that —, in consideration of — dollars, paid by —, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver, unto the said —, the following goods and chattels, namely: —

To have and to hold all and singular the said goods and chattels to the said — and — executors, administrators and assigns, to their own use and behoof forever.

And — hereby covenant with the said — that — the lawful owner of the said goods and chattels; that they are free from all incumbrances

— that — have good right to sell the same as aforesaid; and that — will warrant and defend the same unto —, the said —, heirs, executors, administrators or assigns, against the lawful claims and demands of all persons.

In witness whereof, —, the said —, hereunto set — hand and seal, this — day of —, in the year of our Lord one thousand nine hundred and —.

Signed, sealed and delivered
in presence of.

_____.
_____.
_____.

_____.
_____.
_____.

(NOTE: No contract for the sale of goods, etc., for thirty dollars or more, shall be good unless the purchaser accepts and receives part of the goods, or gives something in earnest to bind the bargain or in part payment thereof, or some note or memorandum thereof is made and signed by the party to be charged thereby or his agent.)

Form of General Powers of Attorney.

Know all men by these presents, that — have made, constituted and appointed, and by these presents do make, constitute and appoint — to be — true, sufficient, and lawful attorney for — and in — name and stead, and to — use, to ask, demand, levy, require, recover, and receive of and from all and every person or persons, whomsoever the same shall or may concern, all and singular sum and sums of money, debts, goods, wares, merchandise, effects, and things whatsoever and wheresoever they shall and may be found due, owing, payable, belonging and coming unto —, the constituent, by any ways and means whatsoever, — giving and hereby granting unto —, said attorney, full power and authority in and about the premises; and to take and use all due means, course and process in the law, for the obtaining and recovering the same; and of recoveries and receipts thereof, and in — name to make, seal and execute due acquittance and discharge; and for the premises to appear, and to represent me before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature, and there, on — behalf, to answer, defend, and reply unto all actions, causes, matters, and things whatsoever, relating to the premises. Also to submit any matter in dispute to arbitration or otherwise; with full power to make and substitute one or more attorneys under h m, — said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises, as fully, amply, and effectually, to all intents and purposes, as —, the said constituent, if present, ought or might personally, although the matter

should require more special authority than is herein comprised, — hereby ratifying, whatsoever — said attorney or — substitute, shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof, — have hereunto set — hand and seal, this — day of —, in the year of our Lord one thousand nine hundred and —.

Signed, sealed and delivered

in presence of

_____.	_____.
_____.	_____.
_____.	_____.

Form of Special Power of Attorney.

Know all men by these presents, that — have constituted, ordained, and made, and in — stead and place put, and by these presents do constitute, ordain, and make, and in — stead and place put — to be — true, sufficient, and lawful attorney for — and in — name and stead to — giving and hereby granting unto — said attorney full power and authority in and about the premises; and to use all due means, course, and process in law, for the full, effectual, and complete execution of the business before described; and in — name to make and execute due acquittance and discharge: and for the premises to appear, and — represent me before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature, and there on — behalf, to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also, to submit any matter in dispute, respecting the premises, to arbitration or otherwise; with full power to make and substitute for the purpose aforesaid, one or more attorneys, under — said attorney and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever, relating to the premises, as fully, amply, and effectually, to all intents and purposes, as I could personally, although the matter should require more special authority than is herein comprised, hereby ratifying, whatsoever — said attorney or — substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof, — have hereunto set — hand and seal, this — day of —, in the year of our Lord one thousand nine hundred and —.

Signed, sealed and delivered

in presence of

_____.	_____.
_____.	_____.
_____.	_____.

Power of attorney to sell land should be acknowledged and recorded like a deed.

Form of Revocation of the Power of Attorney.

Know all men by these presents, that whereas I, A. B., of —, by my letter of attorney bearing date —, did constitute C. D., of —, my attorney for certain purposes, and with certain powers in the said letter of attorney contained: Now know ye that I, the said A. B., do hereby revoke, make void, annul and countermand, the said letter of attorney, and all and singular the powers given by virtue thereof.

In witness whereof, — have hereunto set — hand and seal, this — day of —, in the year of our Lord one thousand nine hundred and —.

A. B. [Seal.]

Form Continuing Guarantee for Payment for Goods and Merchandise Sold to a Third Person.

For value received, the receipt whereof is hereby acknowledged, the undersigned does hereby guaranty to A. B., the prompt payment by C. D. to A. B., at maturity, of all sums of money and debts which he may hereafter owe A. B., for merchandise, which he may from time to time sell to him, whether such debts be on book account, by note, draft or otherwise, and also any and all renewals of any such debt. The undersigned shall not be compelled to pay on this guaranty a sum exceeding one thousand dollars, but this guaranty shall be a continuing guaranty, and apply to and be available to said A. B., for all sales of merchandise he may make to said C. D., until written notice shall have been given by the undersigned to said A. B., and received by him, that it shall not apply to future purchases. Notice of the acceptance of this guaranty and of sales under the same, and demand upon said C. D., for payment, and notice to me of non-payment, is hereby waived,

In witness whereof, I, the undersigned, have hereunto set my hand and seal this — day of —, A. D. 19—.

Witness,

E. F. [Seal.]

AGREEMENT.**General Form of Agreement.**

Articles of agreement, made and concluded, the — day of —, A. D. 19—, by and between A. B., of —, in the county of — and state of —, of the one part, and C. D., of —, in the county of — and state of —, of the other part.

The said A. B., for the consideration hereinafter mentioned, doth hereby covenant and agree, that —.

And the said C. D. doth hereby covenant and agree —.

To the true performance of the several covenants and agreements aforesaid, the said parties do hereby respectively bind themselves, their executors, administrators, and assigns, in the penal sum of — dollars as liquidated damages to be recovered from the party to this agreement, who fails to fully perform the conditions hereby imposed upon him.

In testimony whereof, we have hereunto interchangeably set our hands and seals, the day and year first above written.

A. B. [Seal.]

C. D. [Seal.]

Signed, sealed, and delivered in
presence of J. D. and R. H.

Form of Agreement for Sale of Corn.

It is agreed by A. B., of —, and C. D., of —, as follows:

Said A. B. agrees to sell and deliver to said C. D., at his store in —, on or before the — day of —, one hundred bushels of corn, warranted to be good and merchantable.

Said C. D. agrees to pay said A. B. — dollars, in cash, in full for said corn, on delivery.

Witness our hands and seals, the — day of —, 19—.

A. B. [Seal.]

C. D. [Seal.]

Signed, sealed and delivered
in presence of —.

Form to Convey Land.

Know all men by these presents, that A. B., of —, and C. D., of — hereby covenant and agree as follows:

Said A. B. agrees to convey to said C. D. in fee, a certain tract of land bounded and described as follows: [*describe the premises*] by a warranty deed, duly executed and acknowledged, for — dollars, on or before the — next. Said C. D. agrees to pay said A. B. — dollars for the same, on delivery of the deed; and said C. D. may enter upon and occupy the premises, on —, without paying rent therefor.

[*Penalty for non-fulfillment may be inserted.*]

Witness our hands and seals, this — day of —, A. D. 19—.

A. B. [Seal.]

C. D. [Seal.]

Signed, sealed and delivered
in presence of —.

Form of Assignment by Partnership for the Benefit of Creditors, Common Law Form.

This indenture, tripartite, made and entered into this — day of —, at —, in the county of — and state of —, between —, party of the first part, and —, party of the second part, and such creditors of the said —, as may in accordance with the provisions hereof become parties to this instrument, and subscribe to the terms of the same within thirty days from the date hereof, party of the third part;

Witnesseth: That whereas the said — are unable to pay in full all their just debts and liabilities, and have agreed to assign and convey all their

property, estate and effects not exempt from attachment or seizure on execution, to said —, in trust for the benefit of all their creditors, who become parties hereto within the time aforesaid in the manner hereinafter mentioned; now therefore, in performance of such agreement, and in consideration of the covenants and agreements hereinafter contained, and of one dollar paid by the said party of the second part, the receipt of which is hereby acknowledged, the said —, party of the first part, does hereby give, grant, bargain, sell and convey, transfer, assign, set over and release to said —, party of the second part, his heirs and assigns forever, all lands, tenements, goods, chattels, merchandise, debts and sums of money due, owing or belonging to —, books of account, evidences of indebtedness, choses in action, and all the property and estate, real, personal and mixed, of every kind and nature, and wherever situated, not exempt from attachment or seizure on execution.

To have and to hold the same to the said —, heirs, executors, administrators and assigns, upon the special trust following, to wit:

The said party of the second part shall forthwith take possession of all the property herein conveyed, and as soon as he reasonably can collect, compromise and settle all the debts and sums due or owing as aforesaid, and sell and dispose of all said property for the best prices he can secure, by public or private sale, as he deems best, and pay and apply the moneys arising therefrom in the manner following, to wit:

First. To pay the expenses of preparing these presents and procuring the execution thereof, and all the costs, charges and expenses, incident to or which may be incurred in the care, protection, insurance, collection, sale and disposal of said property, and in and about the execution of the said trust, including a just and reasonable compensation to the said trustee for his services rendered herein.

Second. To distribute the residue of all such trust moneys among all such creditors of the said — as shall become parties hereto within — days from the date hereof, in proportion to the amount of their respective debts; *provided*, that if the amount of such residue shall be more than sufficient to pay in full all such debts, then the excess thereover shall be paid to the party of the first part.

And the party of the first part does hereby constitute the party of the second part the lawful attorney of said — in — name if so elected, but for the purposes aforesaid, to demand, sue for, recover and receive, all and singular the premises assigned in trust, receipt for and give necessary acquittances, to compound the same or any part thereof, or settle the same by arbitration, or any legal or equitable means, at his discretion, and generally to do all acts and things necessary to effect the intent of these presents.

And the said — hereby covenants and agrees with the said parties of the first and of the third part that he will accept and faithfully execute all the trust herein contained, complete the same with all reasonable diligence, and pay over and apply the funds as hereinbefore set forth, and will when-

ever required thereto in writing by the major part in amount of the creditors joining herein render an account of his said trust.

And it is agreed that the said trustee shall not be chargeable for any more than what he shall actually receive by virtue of these presents, nor accountable for any losses that shall happen in the management or disposal of the said trust estate, without his willful fault and neglect. It is further agreed that no dividend or distribution shall be paid to any such creditor unless he shall, if requested thereto by said trustee, present to him within thirty days after such request a detailed statement in writing by him subscribed, giving the credits and allowances thereon, and verified by his oath that the same is correct and legally due.

And the said creditors who may subscribe hereto for the considerations aforesaid do hereby severally agree that they will bring no suits against the said — to enforce collection of any of their respective claims and demands during the continuance of this trust and that upon the completion thereof all their respective debts, claims and demands against said — shall be forever released and discharged; but such settlement and discharge of liability shall not affect or discharge the liability of any party liable for said debts other than said —.

In witness whereof on the day and year first above written the said —, party of the first part, and the said —, party of the second part, and the said creditors, party of the third part, have hereunto set their hands and seals, each one of said creditors adopting as his own seal the seal of —, the first creditor signing these presents.

[*Party making the assignment signs here.*] [Seal.]

STATE OF MAINE.

—, ss.

Then personally appeared — [*party making the assignment*] and acknowledged the foregoing instrument to be his free act and deed.

Before me,

—, *Justice of the Peace.*

Trustee, party of the second part,

[*Trustee sign here.*] [Seal.]

Creditors, party of the third part,

[*Creditors sign here.*] [Seal.]

If the property includes real estate the party making the assignment should acknowledge the same before a justice of the peace, who will fill out the foregoing blank certificate; and the assignment should then be recorded in the registry of deeds of every county in which such real estate is located.

Form of Sheriff's Deed, Sale of Real Estate.

Know all men by these presents, that whereas, I, —, of —, in the county of — and State of Maine, a deputy sheriff duly commissioned by —, sheriff of said county of —, by virtue of an execution, which issued

on a judgment, recovered at a term of the — court, holden at —, within and for the county of —, on the — Tuesday of —, A. D. 19—, by —, of —, in the county of — and State of Maine, against —, for the sum of —, debt and damage, and —, costs of said suit, did on the — day of —, A. D. —, take and seize all the right, title and interest which the said — has or had on the — day of —, A. D. 19—, at — o'clock in the afternoon, being the time when the same was attached on the original writ, in and to the following described real estate, to wit: [*Describe the real estate.*]

And whereas, on the — day of —, A. D. 19—, I gave to — a written notice [*or placed in the post office at —, in said county, a written notice, postage prepaid, to —, of —*], that on the — day of —, A. D. 19—, at — o'clock in the — noon, at the sheriff's office in the city of —, in said county of —, said right, title and interest of the said — in and to the real estate aforesaid, would be sold at public auction, said notice having been given at least thirty days before said time appointed for the sale. And whereas I also posted up a like notice of the time and place of said sale in one public place in the town of —, and also in one public place in each of the towns of —, —, two towns adjoining said town of —, and both in said county of —, all of said notices having been posted at least thirty days before the time of sale described above; and also caused a notice thereof to be published three weeks successively before said day of sale above described in the —, a public newspaper printed in whole or in part in —, in said county of —.

And whereas, at the time and place above described, I sold said right, title and interest of said — in and to the real estate aforesaid, at public auction to —, of —, he being the highest bidder therefor, for the sum of —.

Now therefore, in consideration of said sum of — paid to me in hand by said —, the receipt of which I hereby acknowledge, I, the said —, deputy sheriff as aforesaid, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell and convey unto the said —, his heirs, executors, administrators and assigns, forever, all the right, title and interest which the said — has or had at the date of the attachment as aforesaid, in and to the premises above described, with all of the appurtenances thereto pertaining.

To have and to hold the same to the said —, his heirs, executors, administrators and assigns, to their use and behoof forever. Subject however to be redeemed according to law.

In witness whereof, I have hereunto set my hand and seal this — day of —, in the year of our Lord one thousand nine hundred and —.

Signed, sealed and delivered

in the presence of

———, *Deputy Sheriff.*

Form of Assignment of a Debt, Account or Bond.

Know all men by these presents, that I, A. B., of —, in consideration of — dollars to me paid by C. D., of —, do hereby grant, sell and assign to said C. D. a certain debt due me from E. F., of —, for goods sold and delivered [*or, if a bond, a certain bond, dated the —, made to me by G. H. for — dollars conditioned for the payment of — dollars, or the assignment may be indorsed on the back of the bond or account, in which case say the within bond or the within account*], with full powers to collect and discharge or dispose of the same in my name, at his pleasure, at his own expense and risk. And I do hereby covenant that said debt is justly due, and that I have not done, and will not do any act by which the collection thereof may be hindered or prevented.

Witness my hand and seal, the — day of —, 19—.

Signed and sealed in
presence of —.

A. B. [Seal.]

Form of Assignment by Indorsement of a Judgment Mortgage, or Lease.

Know all men by these presents, that I, E. D., the within named, in consideration of — dollars to me paid by L. M., of —, do hereby grant and assign to said L. M. the judgment within mentioned, with full power to recover the same for his own use, at his own risk and expense. [*If a mortgage, say—do hereby grant and assign to said L. M. the within mortgage, the note, debt and claim thereby secured, and all my right to the premises thereby conveyed.*] [*If a lease, then say—do hereby grant and assign to him, the said L. M., the lease within written, and do hereby covenant that I have not done, and will not do any act by which said lease may be impaired.*] [*May also insert, if desired, covenant by assignee to protect assignor against rent, etc.*]

Witness my hand and seal, the — day of —, 19—.

E. D. [Seal.]

Form of Condition to Maintain a Person.

[*May be used for bond, deed, or mortgage, the proper changes being made.*]

The condition of this obligation is such, that if the said A. B., his executors and administrators, shall, during the natural life of said C. D., suitably support and maintain the said C. D. in the house of said A. B. [*or in such suitable house as said A. B. shall provide*], and provide him with suitable clothes, food, drink, medical attendance, medicine, and nursing, and all other things necessary for his comfortable support, then this obligation shall be void; otherwise the same shall remain in full force.

Form of Condition of Indemnity for Signing a Probate Bond.

The condition of this obligation is such, that if said A. B. shall indemnify said C. D. against all loss, cost, damage, and expense to which he may be subjected by reason of his signing, at the request, and as surety for said A. B., a bond to the judge of probate of the county of —, in the penalty

of — dollars, conditioned for the faithful discharge by said A. B. of his duties, as executor of the will of G. D., deceased, then this obligation shall be void; otherwise the same shall remain in full force.

Form of Condition to a Town for the Support of a Bastard Child.

The condition of this obligation is such, that if the said A. B. shall indemnify the said town of —, from all expenses, costs, and damages which may accrue by reason of the birth, maintenance, and education of a certain bastard child with which one E. F. is now pregnant [*or of which one E. F. has lately been delivered*], and of which said E. F. has on oath complained that said A. B. is the father, then this obligation shall be void; otherwise the same shall remain in full force.

Form of Condition to Pay a Woman for the Support of a Bastard Child.

The conditions of this obligation is such, that if said A. B. shall pay to said C. D. towards the support and maintenance of a bastard child of which said C. D. has lately been delivered, and of which said C. D. has on oath complained that said A. B. is the father, — per week, from the — day of —, during — years, if said child shall so long live, then this obligation to be void; otherwise the same shall remain in full force.

Interest on Note.

Legal rate of interest is 6%. Any rate of interest may be agreed upon and inserted in the note. If rate is larger or smaller than 6%, insert after the rate of interest “until this note is fully paid.” Otherwise a note on 8% pays interest at that rate until it is due, interest from the time it is due is at 6%. Note on 4% pays that rate until due, after that pays 6%.

Holmes Note.

Goods for which note given, to remain the property of the payee, until note is paid.

\$100.

[Date.]

Four months after date I promise to pay to the order of A. B. one hundred dollars, with interest at five per cent until this note is paid. Value received. The bay horse for which the foregoing note is given shall remain the property of the said A. B. until this note is fully paid.

C. D.

Should be recorded in the office of the town clerk of the town where the maker resides.

If maker resides out of the state, then to be recorded in the town where the property is at the time note is made.

Form of Notice to Quit (Landlord to Tenant).

To ———, of ———, in the county of ———:

I hereby notify and require you to quit and deliver up to me at the expiration of thirty days from the — day of —, A. D. 19—, the possession of the following described premises, situated in —, in said county, to wit: — now occupied by you and belonging to me, and this notice is given you for the purpose of determining your tenancy therein.

Dated at —, this — day of —, A. D. 19—.

Form of Return (Copy of Notice to be Inserted Before Return).

I hereby certify, that on the — day of —, I gave in hand to — above named the original notice of which the above is a true copy.

STATE OF MAINE.

County of —, ss.

[Date.]

Personally appeared — and made oath that the above affidavit by him subscribed is true.

——, *Justice of the Peace.*

Form of Proxy (to Represent Stockholder at Corporation Meeting).

Know all men by these presents, that —, stockholder in the —, do hereby appoint — true and lawful attorney, with power of substitution, for — and in — name to vote, as — proxy, at the meeting of the stockholders of said company, to be held at —, on the — day of —, 19—, or at any adjournment thereof, with all the powers which — would possess if personally present.

Witness, — hand and seal, this — day of —, 19—.

Executed in presence of

——.

——. [L. S.]

——.

——. [L. S.]

The proxy should not be given more than thirty days before the meeting.

Form of General Release of all Demands.

Know all men by these presents, that I, A. B., of —, for and in consideration of the sum of —, to me paid by C. D., of — (the receipt whereof I hereby acknowledge), have remised, released, and forever discharged, and I do, for myself, my heirs, executors, administrators, and assigns, remise, release, and forever discharge the said C. D., his heirs, executors, and administrators, of and from all debts, demands, actions, and causes of action, which I now have against him in law and equity, and from any and all of his contracts, liabilities, doings, and omissions, to the date hereof.

In witness whereof, — have hereunto set — hand and seal, this — day of —, in the year of our Lord one thousand nine hundred and —.

Signed, sealed, and delivered

in presence of —.

A. B. [Seal.]

Form of Statement of Lien Claim by Member of a Firm for the Firm.

I, —, of —, in the county of — and State of Maine, member of the firm of —, consisting of —, and —, and deponent, all of —, in the county of — and state of —, doing business at —, on oath depose and say: that there is due the said firm of — from —, of —, in the county of — and state of —, the sum of — dollars and — cents, with all just credits given, for labor [*or labor and materials*] furnished by said — for and which entered into a dwelling-house situated —, owned as this deponent believes by —, or if not so owned its owners are to me unknown, for which said sum of — dollars and — cents the said firm of — has and claims a lien on said building and the land on which it stands and which is connected therewith and appurtenant thereto. The last of said labor [*or labor and materials*] was furnished on the — day of —, A. D. 19—.

Dated at —, this — day of —, A. D. 19—.

STATE OF MAINE.

—, ss.

A. D. 19—.

Subscribed and sworn to by the said —.

Before me,

—, *Justice of the Peace.*

A statement of lien claim by individual for labor performed or for labor or materials furnished may be readily made by changing the foregoing form as the circumstances may require.

Form of Declaration or Acknowledgment of Trust by Trustee.

I, A. B., of —, do hereby acknowledge and declare that a certain writing [*here describe the particular instrument*] is left and deposited in my hands, by and in trust for C. D. and E. F., of —, to be held by me and my legal representatives only in trust, for the convenience, use, benefit, and advantage of said C. D. and E. F., and their legal representatives; and on demand from them, or either of them, that I will produce the same, for the use of either or both of said parties.

Witness my hand, the — day of —, 19—.

A. B.

Form of the Condition of a Bond of Indemnity Given to One Bound for the Obligor for the Payment of Money.

Whereas the above-named A. B., at the special instance and request, and for the only debt of the above-bounden C. D. together with him the said

C. D., is in and by one bond or obligation, bearing even date with the above-written obligation, held and firmly bound unto E. F., of —, in the penal sum of — conditioned for the payment of —, etc., with interest for the same at the rate of — per cent per annum, on — next ensuing the date of the said recited obligation, as, in and by the said recited obligation and the condition thereof, may more fully appear [*or recite the condition verbatim*]: Now the condition of this obligation is such, that if the said C. D., his heirs, executors, or administrators, do and shall, well and truly pay, or cause to be paid unto the said E. F., his executors, administrators, or assigns, the said sum of —, with the interest for the same at the rate of — per cent per annum, as aforesaid, on the — day of — next ensuing the date of the said recited obligation [*if the bond is made payable at several times, say—on the several days and times limited in the said recited condition*], according to the true intent and meaning thereof, and in full discharge and satisfaction of the said recited obligation; and if he, the said C. D., his heirs, executors, or administrators, shall also from time to time, and at all times hereafter, save harmless and indemnify him, the said E. F., his executors and administrators, and his and their goods and chattels, of and from all damages, sums of money, and costs and charges, which he, they, or any of them, shall or may at any time hereafter, be put to by reason of the said A. B.'s being bound with the said C. D. for the payment of the sum of money and interest aforesaid, then this obligation shall be void; otherwise to remain in full force.

Form of Condition of a Bond that a Person When of Age Shall Convey.

Whereas T. S., of —, deceased, by his last will and testament in writing, bearing date on or about the — day of —, did among other things give, devise, and bequeath all that messuage or tenement, etc., then in the occupation of his brother, W. S., to be divided between his two sons, G. S. and R. S., their heirs and assigns, equally, part and share alike; and whereas the above-named I. G. hath agreed with the said G. S. and R. S. for the absolute purchase of the said premises, devised to them as aforesaid, at and for the sum of —, but the said R. S., not being yet of age, cannot join in conveying the same to the said I. G.; and whereas the said I. G. hath at request of the above-bound R. S., and on his promise and undertaking that the said R. S. should as soon as he shall have attained the age of twenty-one years, at the costs and charges of the said I. G., convey to the said I. G., his heirs and assigns, his undivided moiety or half part of the said premises, paid into the hands of the said G. S. the whole of the said purchase money, and the said G. S. hath by his deed of even date herewith duly made, sealed, delivered, and acknowledged, conveyed his undivided moiety, or half part of the said messuage or tenement and premises, to the said I. G., his heirs and assigns. Now the condition of this obligation is such, that if the said R. S. do and shall as soon as he shall have

attained the said age of twenty-one years, at the cost and charge of the said I. G., convey unto the said I. G., his heirs and assigns, by such deeds and conveyances as the counsel of the said I. G. shall advise, his undivided moiety or half part of the said premises, devised to him and the said G. S., as aforesaid, and that without any consideration to be paid him by the said I. G. for so doing; and also if, and in case the said R. S., his heirs, executors, or administrators, do and shall in the mean time, and until the said R. S. shall have executed such conveyances as aforesaid, save, defend, keep harmless and indemnify the said I. G., his heirs, executors, and administrators, and the said premises, to be conveyed by the said R. S. to the said I. G. as aforesaid, and the rents, issues, and profits thereof, of and from all claims and demands to be made thereto by, or on the part and behalf of the said R. S., then this obligation shall be void; otherwise to remain in full force.

Form of Bond to Indemnify One that Has Indorsed a Promissory Note for Another.

Know all men by these presents, that whereas the above-bound A., by bill or note under his hand, dated the — day of —, A. D. 19—, hath promised to pay unto C., or order, six months after date, the sum of —, with interest thereon till paid; and whereas the above-named B., at the request and for the only debt of the said A., hath indorsed the said recited bill or note, and has thereby become chargeable with and for payment of the said sum of —, and interest, at the time therein mentioned, as by the said bill and the indorsement thereupon may appear. Now the condition of this obligation is such, that if the said A., his executors or administrators, do and shall well and truly pay the said sum of —, for which the said note is so given, and the interest thereof, on the day of payment therein mentioned and in full discharge thereof, and therefrom, and from all actions, suits, charges, payments, and damages by reason thereof, shall and do, at all times, well and sufficiently save harmless, and keep indemnified the said B., his heirs, executors, and administrators and every of them, then this obligation shall be void; otherwise to remain in full force.

Form of Agreement for the Purchase of Growing Timber.

Articles of agreement, etc.

First. The said A. [*the seller*], in consideration, etc., to be paid by the said B. [*the buyer*] in manner hereinafter mentioned, and of the covenants and agreements hereinafter contained, and which by the said B., his executors, administrators and assigns, are to be observed and performed, doth hereby grant, bargain and sell unto the said B., etc., all and singular the timber trees, and other trees hereinafter mentioned, being all set out and marked for sale, and standing in the several places hereinafter mentioned (that is to say), — hundred oak trees marked with the letter "S," together with the boughs, lops, tops, and bark thereof, etc., all standing, growing,

and being upon the following described premises —, and which are now in the possession of C. D.

Together with full liberty and authority, for the said B., his servants, agents, and workmen, to fell the said trees at all reasonable and convenient times, and to lay and place the bark of the oak trees in convenient parts of the premises to dry; and the said trees, and wood, with the bark of the oaks, and the boughs, lops, and tops of the whole of the said trees to draw, remove, and carry off, and take away in shares in and by the most usual and convenient ways and parcels, at any time on or before the — day of — next. And also free liberty and authority to and for the said B., his executors, etc., and his and their servants, agents, and workmen, and other person and persons, to whom they shall sell and retail the said timber and wood, or any part thereof, to dig saw pits, and break up and saw the said timber in proper and convenient parts of the said premises, in and upon which the said timber and wood stands and grows, at any time before the said — day of — next, without paying or making any satisfaction to the said A., his heirs, or assigns, or under-tenants.

And the said B., in consideration of the premises, and the bargain and sale of the said trees and bark, made to him as aforesaid, doth for himself, his heirs, etc., covenant and agree with the said A., his executors, etc., by these presents, that he, the said B., etc., shall and will pay to the said A., his executors, etc., the sum of — dollars in manner following, that is to say, etc. And also, that he, the said B., his executors, etc., shall and will fell, hew, and cut down the said oak trees and others, and every of them, and remove and take away the same, with the boughs, etc., thereof, within the time before limited and agreed on for that purpose, and according to the true intent and meaning of these presents; and also shall and will within one month next after the said — day of — next, at his and their own costs and charges, fill up all such saw pits as shall, for the purposes aforesaid, have been made by him or his servants, on any of the said lands; and also fence, amend, and repair all the hedges and fences in and about the said lands, in all such places as shall be broken, or otherwise damaged or destroyed, in felling, hewing or carrying away the said timber, on being allowed by the said A. hedge wood for that purpose. [*A clause for submitting disputes to arbitration may be added at discretion.*]

In witness whereof, — have hereunto set — hand and seal, this — day of —, in the year of our Lord one thousand nine hundred and —.

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